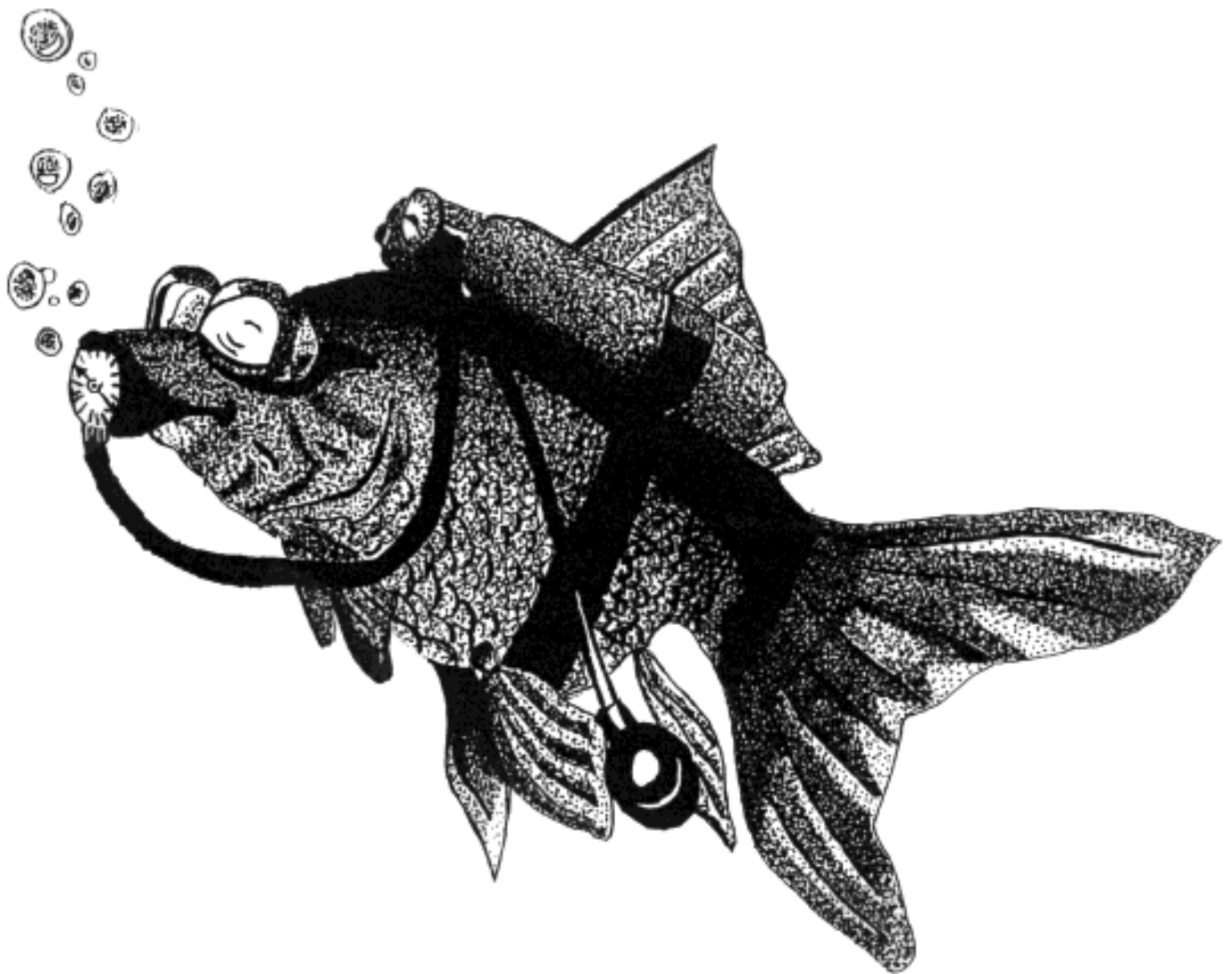


TEXAS REGISTER

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10th Grade

Sanger High School

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(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>

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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) 463-2110.

Request for Opinions

RQ-1148. Request from the Honorable Kim Brimer, Chair, Committee on Business and Industry, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether section 321.406, Tax Code, limits the frequency of elections held under chapter 334 of the Local Government Code.

RQ-1149. Request from the Honorable, James A. Farren, Randall County Criminal District Attorney, 501 Sixteenth Street, Suite 300, Canyon, Texas 79015, concerning whether the superintendent of a county road district may hire the son of a county commissioner.

RQ-1150. Request from the Honorable James A. Farren, Randall County Criminal District Attorney, 501 Sixteenth Street, Canyon, Texas 79015, concerning whether a county may adopt a policy to buy back sick leave from its employees.

RQ-1151. Request from Mr. Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning Taxation of property owned by a charter school.

RQ-1152. Request from Mr. Steve Robinson, Executive Director, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, concerning applicability of the sex offender registration law to juveniles adjudicated in other states and supervised in Texas under the Interstate Compact on Juveniles.

RQ-1153. Request from the Honorable Kim Brimer, Chair, Committee on Business and Industry, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a dishonored check is a "debt" for purposes of chapter 392 of the Texas Finance Code and 15 U.S.C. section 1692.

RQ-1154. Request from the Honorable John Whitmire, Chair, Committee on Criminal Justice, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning Regulation of embalming.

RQ-1155. Request from the Honorable Donna J. Gordon, Houston County Attorney, 100 North Sixth Street, Suite 105, Crockett, Texas 75835, concerning whether a county may pay the autopsy expenses of a resident who dies in a neighboring county hospital.

RQ-1156. Request from Mr. Louis J. Rodriguez, President, Midwestern State University, 3401 Taft Boulevard, Wichita Falls, Texas 76308-2099, concerning whether Midwestern State University may convey the mineral rights in unimproved land it plans to sell to a residential housing developer.

RQ-1157. Request from the Honorable Jose R. Rodriguez, El Paso County Attorney, County Courthouse, 500 East San Antonio, Room 203, El Paso, Texas 79901, concerning authority of a hospital district to issue a warrant to a third party as a hedge against interest rate fluctuations.

TRD-9811003

TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Requests

AOR-440. The Texas Ethics Commission has been asked to consider a question about the personal use prohibition in Election Code section 253.035.

AOR-441. Regarding the interpretation of the term "particular matter" for purposes of Government Code section 572.054(b).

AOR-442. The Texas Ethics Commission has been asked to consider whether the requirement to file an annual personal financial disclosure statement applies to the executive head of an institution that is identified in Education Code section 61.003(6) as an "other agency of higher education."

AOR-443. Whether a general-purpose political committee is required to file pre-election reports under Election Code section 254.154 if, during the period covered by those reports, the committee makes a contribution to support a candidate who is unopposed in the election.

AOR-444. The Texas Ethics Commission has been asked whether a corporation may make political contributions to defray administrative expenses to a general-purpose political committee that has no other connection to the corporation.

AOR-445. The Texas Ethics Commission has been asked about compliance with the disclosure requirement set out in Election Code section 255.001 by a political committee that has not crossed either of the thresholds set out in Election Code section 253.031(b) and has therefore not yet filed a campaign treasurer appointment.

TRD-9811081
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: July 13, 1998

EMERGENCY RULES

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 58. Oysters and Shrimp

Subchapter B. Statewide Shrimp Fishery Proclamation

31 TAC §58.161

The Texas Parks and Wildlife department amends on an emergency basis §58.161 (d)(2)(A), concerning provisions for an earlier or later opening of the shrimping season in Gulf (outside) waters of the Texas territorial sea (nine nautical miles). Based on sound biological data, the executive director has determined that optimum migration of small brown shrimp from the bays to the Gulf of Mexico will occur earlier than the established July 15 regulatory opening date. Sound biological data indicate that most of the shrimp on the Gulf fishing grounds will be of satisfactory size to achieve maximum benefits from the resource on July 8, 1998.

The purpose of the closed Gulf season is to protect brown shrimp during their major period of emigration from the bays to the Gulf of Mexico until they reach a larger, more valuable size before harvest and to prevent waste caused by the discarding of smaller individuals. The season closed 30 minutes after sunset May 15, 1998.

The executive director finds imminent peril to the public welfare which requires an emergency measure to set an opening date to

minimize social and economic hardship in a depressed industry by opening the season seven days earlier than scheduled to obtain optimum yield from the resource.

The amendment is adopted on an emergency basis under authority of Parks and Wildlife Code §77.062, and 31 TAC §58.161 (d)(2)(A). In April 1978, the Texas Parks and Wildlife Commission delegated to the executive director the duties and responsibilities of opening and closing the shrimping season under this section.

§58.161. *Shrimping in Outside Waters.*

(a)-(c) (No change.)

(d) Gulf shrimping seasons. The outside waters are open to shrimping except:

(1) (No change.)

(2) Summer closed season:

(A) The outside waters are closed from 30 minutes after sunset on May 15 to 30 minutes after sunset July 8 [~~July 15~~].

(B)-(C) (No change.)

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

Issued in Austin, Texas on July 8, 1998.

TRD-9810791

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: July 8, 1998

Expiration date: November 5, 1998

For further information, please call: (512) 389-4642



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XV. Texas Health and Human Services Commission

Chapter 355. Medicaid Reimbursement Rates

Subchapter F. General Reimbursement Methodology for all Medical Assistance Programs

1 TAC §355.775

The Texas Health and Human Services Commission proposes amendments to §355.775 of Chapter 355, Subchapter F, concerning reimbursement for the mental retardation local authority (MRLA) program operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR).

The proposed amendments would allow the MRLA reimbursement rate for indirect costs to be based on a detailed task analysis. Additionally, subsection (h) would be deleted due to redundancy with language found in §355.723 of this title (governing Reimbursement Methodology for Home and Community-based Services).

Gary Bego, associate commissioner for fiscal policy, has determined that for each year of the first five-year period the rule, as proposed, would be in effect there would be for FY 1998 a total fiscal impact of \$52,500, of which \$32,697 is Federal and \$19,803 is State; for FY 1999 a total fiscal impact of \$216,787, of which \$135,353 is Federal and \$81,434 is State; for FY 2000 a total fiscal impact of \$229,298, of which \$143,197 is Federal and \$86,101 is State; for FY 2001 a total fiscal impact of \$242,300, of which \$151,317 is Federal and \$91,983 is State; for FY 2002 a total fiscal impact of \$248,600, of which \$155,251 is Federal and \$93,349 is State. There would be no effect on local government.

Mr. Bego also has determined that for each year of the first five years the amendments would be in effect the public benefit anticipated would be an increase in administrative efficiency and flexibility. For each year of the first five years the amendments would be in effect there would be no effect on small business. For each year of the first five years the amendments would be in

effect there would be no anticipated economic cost to persons who are required to comply with the amendments.

A public hearing will be held at 9 a.m., Monday, August 6, 1998, in Room 240 of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should contact the Central Office operator, at least 72 hours prior to the hearing by calling the TDD phone number which is (512) 206-5330. Persons requiring any other ADA accommodation should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the proposal may be directed to Ron Gernsbacher, Medicaid Administration, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668.

Comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668, within 30 days of publication of this notice.

The sections are proposed under the Texas Human Resources Code, Chapter 32, §32.021, and Texas Government Code, Chapter 531, §531.021, which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer federal medical assistance funds and the administer the state's medical assistance.

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

§355.775. *Reimbursement Methodology for the MRLA Program.*

(a) (No change.)

(b) Reimbursement rates apply to all providers uniformly by the type of service component provided and the individual's level-of-need. [Case management is not a reimbursable service under the MRLA program.]

(c) (No change.)

(d) Modeled rates are based on relevant cost information including a sample of historical cost information and operational

experience of service providers in Texas. The rates will be the same as the HCS rates which are set in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)), with the exception of the case management service component, as explained in subsection (g) of this section.

(e) Rates for service components may also take into account the individual's level of need as defined in 25 TAC §409.507 (Payment Category Assignment and Provider Claims Payment). Rates for residential support, MRLA foster/companion care, and day habilitation vary by level of need and are paid on a daily basis.

(f) (No change.)

(g) The administrative rate for the indirect costs of the MRLA program is paid as a flat monthly fee to the program provider. Effective June 1, 1998, the administrative rate is determined by reducing the HCS modeled rate for case management by the amount of cost related to the tasks required of a HCS provider which are not required of a MRLA provider. This reduction will be based on a detailed task analysis. [The rate is that portion of the HCS modeled rate set for case management but does not include the direct service cost and overhead for case management.] Case management is not a reimbursable service under the MRLA program.

~~[(h) The rates are derived for each type of service and, when appropriate, each level-of-need, to include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for out-of-home respite care; administrative costs; and professional consultation and program support costs. With the exception of the rate for indirect and administrative costs noted in subsection (g) of this section, rates will be set at the same time as the HCS rates in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)).]~~

~~[(h) [(i)] The modeled rates will be analyzed to determine if rebasing is necessary in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)).]~~

This 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 July 13, 1998.

TRD-9811004

Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Earliest possible date of adoption: August 23, 1998

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

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Subchapter D. Certification

16 TAC §23.32

(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 §23.32 relating to Automatic Dial Announcing Devices. Project Number 19466 has been assigned to this proceeding. The Appropriations 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, §23.32 will be duplicative of proposed new §26.125 of this title (relating to Automatic Dial Announcing Devices) in Chapter 26 (Substantive Rules Applicable to Telecommunications Service Providers).

Mr. Robert Rice, assistant general counsel, Office of Regulatory Affairs, 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. Rice 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. Rice 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, PO Box 13326, Austin, Texas 78711-3326, within 17 days after publication. All comments should refer to Project Number 19466, repeal of §23.32.

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.

§23.32. Automatic Dial Announcing Devices.

This 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 July 9, 1998.
TRD-9810868
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 23, 1998
For further information, please call: (512) 936-7308

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16 TAC §23.33

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §23.33 relating to Telephone Solicitation. Project Number 19467 has been assigned to this proceeding. The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re-adoption 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, §23.33 will be duplicative of proposed new §26.126 of this title (relating to Telephone Solicitation) in Chapter 26 (Substantive Rules Applicable to Telecommunications Service Providers).

Mr. Robert Rice, assistant general counsel, Office of Regulatory Affairs, 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. Rice 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. Rice 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, PO Box 13326, Austin, Texas 78711-3326, within 17 days after publication. All comments should refer to Project Number 19467, repeal of §23.33.

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.

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§23.33. Telephone Solicitation.

This 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 July 9, 1998.

TRD-9810870
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 23, 1998
For further information, please call: (512) 936-7308

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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter F. Regulation of Telecommunications Service

16 TAC §26.125

The Public Utility Commission of Texas (PUC or commission) proposes new §26.125, relating to Automatic Dial Announcing Devices (ADAD). The proposed new section will replace §23.32 of this title (relating to Automatic Dial Announcing Devices), and will conform §26.125 to HB2128 (75th Legislature) requirements which restrict ADAD solicitation and impose additional obligations upon ADAD solicitors. Project Number 19466 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re-adoption 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. 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.

General changes to rule language:

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act (PURA) have been updated to conform to the Texas Utilities Code. The definition subsection has been proposed for deletion in the new section as the definitions have already been proposed for Chapter 26 in §26.5 of this title (relating to Definitions). The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 19466.

Other changes specific to each section:

Proposed new §26.125 will replace corresponding §23.32 of this title (relating to Automatic Dial Announcing Devices), subsections (a), (c), (d), (e), (f), (g), and (h). Subsection (b)(6) has been modified by changing the one minute time limit to 30 seconds. A new subsection (g) imposing obligations on ADAD operators concerning the use of caller identification services and per line and per call blocking has been proposed. The change in proposed (b)(6) and new subsection (g) will conform the section to HB 2128 (75th Legislature). Subsection (c)(1) has been modified by deleting the requirement that all holders of permits issued prior to September 1, 1991 apply for renewal within 60 days of the effective date of the section. The provision is in (d)(1) of §23.32 and has executed.

Janis Ervin, senior utilities analyst, Telecommunications Industry Analysis Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Janis Ervin has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection of the public interest, a reduction in the number of public complaints concerning the use of ADADs and an increase in compliance with the ADAD provisions of PURA by ADAD operators. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed section (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 17 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to Project Number 19466.

This new section 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; and specifically, PURA §55.137 which grants the commission authority to impose an administrative penalty against a person who operates an ADAD in violation of subchapter F of PURA; and PURA §55.134 which requires the commission to enforce subchapter F of PURA and to investigate complaints relating to the use of ADADs.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, and 55.121-55.138.

§26.125. Automatic Dial Announcing Devices (ADAD).

(a) Purpose. The purpose of this section is to regulate the use of automatic dial announcing devices.

(b) Requirements for use of an automatic dial announcing device. A person who operates an ADAD to make a telephone call in which the device plays a recorded message when a connection is completed to a telephone number must comply with the following requirements.

(1) An ADAD operator must obtain a permit from the commission and give written notice specifying the type of device to be connected to each telecommunications utility over whose system the device is to be used.

(2) The device must not be used for random number dialing or to dial numbers by successively increasing or decreasing integers. In addition, the device must not be used in a way such that two or more telephone lines of a multi-line business are engaged simultaneously.

(3) Within the first 30 seconds of the call, the ADAD message must clearly state the nature of the call, the identity of the business, individual, or other entity initiating the call, and the telephone number (other than that of the ADAD which placed the call) or address of such business, individual, or other entity. However, if an ADAD is used for debt collection purposes and the use complies with applicable federal law and regulations, and the ADAD is used by a live operator for automatic or hold announcement purposes, the use complies with this paragraph.

(4) The entire ADAD message must be delivered in a single language.

(5) The device must disconnect from the called person's line no later than 30 seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator must introduce the call and receive the oral consent of the called person before beginning the message. In addition, the device must comply with the line seizure requirements in 47 Code of Federal Regulations §68.318(c)(2).

(6) The device, when used for solicitation purposes, must have a message shorter than 30 seconds or have the technical capacity to recognize a telephone answering device on the called person's line and terminate the call within 30 seconds.

(7) For calls terminating in Texas, the device must not be used to make a call:

(A) for solicitation before noon or after 9:00 p.m. on a Sunday or before 9:00 a.m. or after 9:00 p.m. on a weekday or a Saturday; or

(B) for collection purposes at an hour at which collection calls would be prohibited under the federal Fair Debt Collection Practices Act (15 United States Code §1692, et seq.).

(8) Calls may not be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, medical physician or service offices, health care facilities, poison control centers, "911" lines, or other entities providing emergency service. In addition, calls may not be made to telephone numbers of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment, any telephone numbers assigned to paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier, or any service for which the called party is charged for the call.

(9) If during a call a cross-promotion or reference to a pay-per-call information service is made, the call must include:

(A) a statement that a charge will be incurred by a caller who makes a call to a pay-per-call information services telephone number;

(B) the amount of the flat-rate or cost-per-minute charge that will be incurred or the amount of both if both charges will be incurred; and

(C) the estimated amount of time required to receive the entire information offered by the service during a call.

(c) Permit to operate an ADAD.

(1) An application for a permit to use one or more ADADs must be made using a form prescribed by the commission and must be accompanied by a fee of \$500. A permit is valid for one year after its date of issuance. Renewals must be applied for no later than 90 days prior to the expiration date of the current permit. Subject to paragraph (3) of this subsection, a permit may be renewed annually by making the filing required by this section and paying a renewal fee of \$100.

(2) Each application for the issuance or renewal of a permit under this section must contain the telephone number of each ADAD that will be used and the physical address from which the ADAD will operate. If the telephone number of an ADAD or the physical address from which the ADAD operates changes, the owner or operator of the ADAD shall notify the commission by certified mail of each new number or address not later than the 48th hour before the hour at which the ADAD will begin operating with the new telephone number or at the new address. If the owner or operator of an ADAD fails to notify the commission as required by this subsection within the period prescribed by this subsection, the permit is automatically invalid.

(3) In determining if a permit should be issued or renewed, the commission will consider the compliance record of the owner or operator of the ADAD. The commission may deny an application for the issuance or renewal of a permit because of the applicant's compliance record.

(4) A local exchange company (LEC) may obtain, on request to the commission, a copy of a permit issued under this section and of any changes relating to the permit.

(5) The commission may revoke a permit to operate an ADAD for failure to comply with this section.

(d) Exceptions. This section does not apply to the use of an ADAD to make a telephone call:

(1) relating to an emergency or a public service under a program developed or approved by the emergency management coordinator of the county in which the call was received; or

(2) made by a public or private primary or secondary school system to locate or account for a truant student.

(e) Complaints, investigation, and enforcement.

(1) If the commission determines that a person has violated the requirements of this section, the telecommunications utility providing service to the user of the ADAD shall comply with a commission order to disconnect service to the person. The telecommunications utility may reconnect service to the person only on a determination by the commission that the person will comply with this section. The utility shall give notice to the person using the device of the utility's intent to disconnect service not later than the third day before the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given on the day before the date of disconnection.

(2) A telecommunications utility may, without an order by the commission or a court, disconnect or refuse to connect service to a person using or intending to use an ADAD if the utility determines that the device would cause or is causing network harm.

(3) A LEC that receives a complaint relating to the use of an ADAD shall send the complaint to the commission according to the following guidelines:

(A) the complaint shall be recorded on a form prescribed by the commission;

(B) the LEC shall inform the complainant that the complaint, including the identity of the complainant and other information relevant to the complaint, will be forwarded to the commission;

(C) the complaint form and any written complaint shall be forwarded to the commission within three business days of its receipt by the LEC.

(f) Permit Suspension/Child Support Enforcement. In consideration of the Texas Family Code Annotated, Chapter 232, as it may be subsequently amended, which provides for the suspension of state-issued licenses for failure to pay child support, the commission shall follow the procedures set out in this subsection.

(1) Provision of information to a Title IV-D agency. Upon request, the commission shall provide a Title IV-D agency with the name, address, social security number, license renewal date, and other identifying information for each person who holds, applies for, or renews an ADAD permit issued by the commission. This information shall be provided in a format agreed to between the Title IV-D agency and the commission.

(2) Suspension of permit. Upon receipt of a final order issued by a court or a Title IV- D agency suspending an ADAD permit under the provisions of the Texas Family Code, Chapter 232, the commission shall immediately:

(A) record the suspension of the permit in the commission's files; and

(B) notify the telecommunications utility providing service to the user of an ADAD that the permit has been suspended.

(3) Service disconnection. Upon receipt of notification by the commission that a permit has been suspended under the provisions of this subsection, the telecommunications utility providing service to that user of an ADAD shall immediately disconnect service to that person.

(4) Refund of fees. A person who holds, applies for, or renews an ADAD permit issued by the commission that is suspended

under the provisions of this subsection is not entitled to a refund of any fees paid under subsection (c) of this section.

(5) Reinstatement. The commission may not modify, remand, reverse, vacate, or reconsider the terms of a final order issued by the court or a Title IV-D agency suspending a permit under the provisions of the Texas Family Code, Chapter 232. However, upon receipt of an order by the court or Title IV-D agency vacating or staying an order suspending a person's permit to operate an ADAD, the commission shall promptly issue or re-issue the affected permit to that person if that person is otherwise qualified for the permit and has paid the applicable fees as set out in subsection (c) of this section.

(g) Obligations of the ADAD Solicitor.

(1) If an ADAD is used which plays a recorded message when connection is completed to the end user telephone, the solicitor's device must display a telephone number at which the solicitor receives calls so that an end user's caller identification device displays this number.

(2) Per line blocking and per call blocking may not be used by the ADAD solicitor.

(h) Penalties. A person who operates an ADAD without a valid permit, with an expired permit, or with a permit that has been suspended under the provisions of subsection (f) of this section or who otherwise operates the ADAD in violation of this section or a commission order is subject to an administrative penalty of not more than \$1,000 for each day or portion of a day during which the ADAD was operating in violation of this section. However, nothing in this subsection is intended to limit the commission's authority under the Public Utility Regulatory Act §15.021, et seq. (Vernon 1998).

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

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

TRD-9810869

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 23, 1998

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



16 TAC §26.126

The Public Utility Commission of Texas (PUC or commission) proposes new §26.126, relating to Telephone Solicitation. The proposed new section will replace §23.33 of this title (relating to Telephone Solicitation), and will conform §26.126 to HB2128 (75th Legislature) requirements which imposes additional obligations upon telephone solicitors. Project Number 19467 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re-adoption 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 re-adopting 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. 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.

General changes to rule language:

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act (PURA) have been updated to conform to the Texas Utilities Code. The definition subsection has been proposed for deletion in the new section as the definitions have already been proposed for Chapter 26 in §26.5 of this title (relating to Definitions). The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 19467.

Other changes specific to each section:

Proposed new §26.126 will replace corresponding §23.33 of this title relating to Telephone Solicitation, subsections (a), (c), and (d) of this title. Proposed new subsections (c)(3), (c)(4), and (d) impose requirements on telephone solicitors relating to call blocking, caller identification display and provide for a penalty for violation of the section. These new subsections have been added to conform the section to HB 2128.

Janis Ervin, senior utilities analyst, Telecommunications Industry Analysis Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Janis Ervin determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased protection of the public interest and improved enforcement of the telephone solicitation provisions of HB 2128 (75th Legislature). There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed section (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 17 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or re-adopt-

ing the rule continues to exist. All comments should refer to Project Number 19467.

This new section 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; and specifically PURA §55.151 which grants the commission authority to enforce PURA §55.151, and PURA §55.152 which requires the commission to require local exchange companies and telephone cooperatives to provide to consumers the notice specified in §55.152.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 55.151 and 55.152.

§26.126. Telephone Solicitation.

(a) Purpose. The purpose of this section is to require local exchange companies (LECs) to inform their customers of provisions of the law regarding telephone solicitation and to require telephone solicitors to implement systems and procedures to ensure that they do not solicit persons who ask not to receive consumer telephone calls.

(b) Responsibility of LECs. Each LEC shall inform its customers of the provisions of the Business and Commerce Code, Chapter 37, and the Public Utility Regulatory Act §55.151 by inserting the notice prescribed by this subsection annually in the billing statement mailed to a customer. The notice required by this subsection shall be mailed to each customer as a bill insert. For residential customers, the notice required by this subsection and any customer proprietary network information (CPNI) notice required by §26.122 of this title (relating to Customer Proprietary Network Information) shall be published as a single insert and mailed to the customer in a billing statement. Each LEC shall also publish the notice required by this subsection in the consumer information pages of its local telephone directory on the same page or on a page adjacent to where the CPNI notice required by §26.122 of this title appears. The notice shall read as follows:
Figure: 16 TAC §26.126(b).

(c) Responsibilities of telephone solicitors.

(1) Each telephone solicitor operating in this state who makes consumer telephone calls shall implement systems and procedures so that every effort is made not to call consumers who ask not to be called again. Upon request, a telephone solicitor shall provide a written description of such systems and procedures to the Public Utility Commission.

(2) Every telephone solicitor must state the purpose of the call, the identity of the person and company or organization making the call, and a telephone number at which the person, company, or organization making the call may be reached, except where the provision of such information is prohibited under the federal Fair Debt Collection Practices Act (15 United States Code, §§1692, et seq.).

(3) A telephone solicitor may not use any method, including per call blocking or per line blocking, that prevents caller identification information for the solicitor's lines from being shown by an end user's caller identification device.

(4) The solicitor's displayed caller identification number must be one at which telephone calls may be received by end users if the solicitor leaves messages on end user answering machines or uses ADAD devices which play a recorded message. Solicitors must comply with this provision by September 1, 1998.

(d) Penalties for non-compliance. Telephone solicitors who violate the provisions of subsection (c) of this section are subject to an administrative penalty not to exceed \$1,000 for each day or portion of a day in which non-compliance occurs.

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

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

TRD-9810871

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 23, 1998

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



Part VI. Texas Motor Vehicle Board

Chapter 101. Practice and Procedure

Subchapter C. Adjudicative Proceedings and Hearings

16 TAC §101.67

The Texas Motor Vehicle Board proposes to adopt new §101.67, specifying the format for documents filed with the Board after a proposal for decision has been issued. This new section sets standards for document length, type size, margins, paper size and number of copies, as well as requiring citations to the evidentiary record in contested cases. Except for document length, the rule will not be strictly construed in cases brought in warranty performance cases (the Lemon Law) or where a party appears without legal representation. The section is proposed to standardize written submissions to the Motor Vehicle Board.

Brett Bray, Director, Motor Vehicle 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.

Mr. Bray has also determined that for each of the first five years the rule is in effect the public benefit anticipated from enforcement of the proposed rule will be balanced communication between interested parties and the Board regarding issues in contested cases. There will be no effect on small businesses. The anticipated economic cost to persons who must comply with the new section is the cost of providing additional copies of submissions for the Board's use.

Comments on the proposed rule may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. Please submit fifteen copies. The Texas Motor Vehicle Board will consider the final adoption of the proposed rule at its meeting on September 10, 1998. The deadline for receipt of comments is 5:00 p.m. on August 24, 1998.

The new rule is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of this act. Texas Motor Vehicle Commission Code §§101.9, 101.13, 101.60-101.64, 101.66 and 107.7 are affected by the proposed new rule.

§101.67. Format for Documents Filed with the Board Subsequent to the Issuance of a Proposal for Decision.

(a) The total number of typewritten pages of a party's exceptions to proposals for decision and motions for rehearing must not exceed the total number of pages of the examiner's proposal for decision, and the total number of typewritten pages of a party's replies to exceptions and replies to motions for rehearing must not exceed three-fourths of the total number of pages of the examiner's proposal for decision, exclusive of pages containing the cover, index, table of authority, and attachments. The total number of pages of amicus briefs must not exceed three-fourths of the total number of pages of the examiner's proposal for decision, exclusive of pages containing the cover, index, table of authority, and attachments. In no event, such as when the examiner's proposal for decision is less than 15 pages, will this rule be construed to limit the length of a party's exception to a proposal for decision, motion for rehearing, or response thereto, to less than 10 pages.

(b) Exceptions, motions for rehearing, replies to exceptions, replies to motions for rehearing, and amicus briefs shall be printed or typed on 8 1/2 inch by 11 inch bond paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each side. Pages shall be numbered in the 1 inch margin at the bottom of each page. All typewriting except block quotations and footnotes shall be double spaced.

(c) Where applicable, when the exceptions, motions for rehearing, replies to exceptions, and replies to motions for rehearing refer to facts or testimony from the evidentiary record, these statements must be followed by a reference to the specific exhibit or page number in the transcript where the fact or testimony is found.

(d) Each party or interested person shall file an original and 15 copies of its exceptions, motions for rehearing, replies to exceptions, replies to motions for rehearing, and amicus briefs.

(e) Other than document length, the requirements in subsections (a)-(d) of this section are not to be strictly construed in cases brought under §6.07 (the Lemon Law) or §3.08(i) (warranty performance) of the Texas Motor Vehicle Commission Code or where a party appears pro se.

(f) The examiner, director, or Board have the sole right to examine and determine whether documents meet the requirements of this section. If a document fails to meet the requirements of this section, the examiner, director, or Board have the discretion to accept the document as written, consider only those pages which meet the requirements of this section, or direct the party to make whatever modifications necessary to substantially conform the document to the requirements of this section. Any motion or request to strike a document filed under this section for failure to meet the requirements of subsections (a)-(d) of this section will not be considered by the examiner, director, or Board.

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

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9811026

Brett Bray

Director, Motor Vehicle Division

Texas Motor Vehicle Board

Proposed date of adoption: September 10, 1998

For further information, please call: (512) 416-4910



TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 71. Applications and Applicants

The Texas Board of Chiropractic Examiners proposes amendments to §§71.1-71.3, 71.5-71.7, 71.10, and 71.11 and the repeal of §71.8 and §71.9, relating to applications and applicants in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. In accordance with §167, the board has reviewed this chapter and has determined that it should be readopted, in part, with changes to §§71.1-71.3, 71.5-71.7, 71.10, and 71.11. The board finds that the reasons for this chapter, with the proposed changes, continues to exist. The board has determined that §71.8 and §71.9 should be repealed because the reasons for these sections no longer exist. Section 71.6(j) and §71.10(b) and (c) are being deleted.

The proposed amendments conform and clarify the rules as to current application and examination requirements and procedures. Other changes are proposed for further clarity, grammar and consistency. Specifically, in §71.1, a definition, and thus, a single abbreviated reference for the Chiropractic Act (Act), Texas Civil Statutes, Article 4512b, is proposed for uniformity and clarity. Presently, the Act is referenced in various forms throughout Chapter 71. Other proposed amendments conform inconsistent references to the Act throughout Chapter 71 to the proposed abbreviated form. Definitions for the terms "executive director" and "licensee" are proposed for deletion. Throughout Chapter 71, the term "executive director" is proposed for change to the "board". A reference to a specific employee of the board is not required for the board to act through its authorized employees. Except for actions that require the governing body of the agency to act, the board's administrative responsibilities are generally delegated to the executive director and other staff, and they act on behalf of the board. The term "licensee" is not used in the substantive sections of this chapter; therefore, no definition is needed.

In §71.2(b) and §71.10, changes are proposed to conform the sections' fee requirements with, as well as to simply refer to, §75.7, which sets out the board's current fee schedule. In §71.2(d), the 60-day deadline for submitting application materials is reduced to 30 days which provides the board with sufficient time to process applications prior to an examination. The first sentence in §71.2(g) is proposed for deletion. The subject matter is addressed in §71.10; moreover, as written it implies that an applicant need not pay the reexamination fee for the first reexamination. This is incorrect and conflicts with §71.10.

Two provisions in §71.6 are proposed for deletion since the reasons for the provisions no longer exist. A proposed amendment to subsection (c) deletes the board's duty to provide a schedule of each examination to examinees. This procedure applied when the board gave multiple examinations; it is not necessary currently in connection with the only board administered test, the jurisprudence examination. Subsection (j) is proposed for deletion, because it applied only through 1997. One other proposed amendment to §71.6 substitutes the term "examinee" for current references to "applicant" or "candidate". For clarity and

consistency, "examinee" appears to be the more appropriate term.

Section 71.8 is proposed for repeal. The reason for this section no longer exists. The board no longer administers the referenced examinations. The National Board Examination covers the test subjects listed in this section. The rule is, therefore, no longer needed. Section 71.9 is also proposed for repeal. The subject matter of §71.9(a), passing scores, is addressed in §71.6(b). The subject matter of subsection (b), the preparation of questions and grading of examinations, is not required to be in rule form; neither does the subsection reflect current board practice. Board examination questions are prepared and graded under the direction of the licensure and educational standards committee and the executive director. Therefore, neither subsections are needed.

Other amendments to §71.10 are proposed, relating to re-taking the jurisprudence examination. As currently written, subsections (a) and (b) required reexamination of any board exam to occur within a year from the prior examination. If it was not, the examinee had to retake all board examinations. This restriction is not feasible with the single jurisprudence examination. Therefore, conforming amendments that reflect the change in examinations are proposed for §71.10(a), with no time restriction on reexamination, and subsection (b) is proposed for deletion. Subsection (c) is also proposed for deletion. The subsection allows applicants to take the jurisprudence examination in their final semester of chiropractic school. The Chiropractic Act (Act), §10(g), gives the board the discretion to allow last semester applicants to take the examination. The board has found that administration of the examination and the licensing process for such persons cannot be efficiently or accurately carried out. Difficulties obtaining verification of graduation from these persons frequently occur, once the examination had been taken and a license issued, which undermines the board procedures as well as the Act and board policy of licensing only qualified individuals. The board is, therefore, allowing examination only after, and upon proof of, graduation; however, the board currently gives the examination several times each year. Thus, the purpose behind subsection (c)—enabling graduates to meet license eligibility as soon as possible after graduation—is continued with multiple examination opportunities each year. A proposed amendment to subsection (d) deletes the provision providing for a hearing on disqualification for examination, if practical, before the scheduled examination. Hearings must be coordinated with the State Office of Administrative Hearings (SOAH) which is responsible for scheduling and presiding over hearings. Under the Administrative Procedure Act (APA), the board and other parties must also comply with certain procedural requirements and deadlines before a hearing is held. In reality, it is not feasible to provide for a hearing prior to the examination to which admission was denied; therefore, this provision has no practical application. With the number of examinations currently provided each year, a disqualified applicant can still take an examination within a relatively short period of time after the initial disqualification and hearing, if the disqualification is overturned. Another proposed amendment to subsection (b) gives notice that such hearings are subject to all the procedural requirements in the APA, which includes the right of the applicant to appear, testify and present evidence, the only procedural requirements in APA currently referenced in this subsection.

Joyce Kershner, director of licensure has determined that for the first five year period the rules as amended are in effect, there

will be no fiscal implications for state or local government, as a result of enforcing or administering the rules as amended.

Ms. Kershner also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules as amended will be: that licensees and the public are provided better notice of the board's current application and examination process. There will be no added effect on small businesses versus that on larger businesses. Each licensee is subject to the same requirements, regardless of the size of their practice. There is no anticipated economic costs to persons who are required to comply with the amended rules inasmuch as the primary purpose of the proposal is to revise board rules to remove unnecessary language and to conform language to other related rules for consistency.

Comments may be submitted, no later than 30 days from the date of this publication, to Dr. Keith Hubbard, D.C., Chairman, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

22 TAC §§71.1-71.3, 71.5-71.7, 71.10, 71.11

The amendments are proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and §10, which sets out the board's duties relating to licensing, including subsection (c) which expressly authorizes the board to establish by rule the conditions under which an applicant may be reexamined, and subsection (g) which gives the board the discretion to allow last semester applicants to take the board examination.

The following sections of Texas Civil Statutes, Article 4512b are affected by these proposed amendments: §§4(c), 4a, 10.

§71.1. Definitions.

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

- (1) Applicant—An individual who applies to take the examination for licensure given by the board.
- (2) Board—The Texas Board of Chiropractic Examiners.
- (3) Board member—One of the appointed members of the decision-making body defined in this section as the board.
- (4) Chiropractic Act - Texas Civil Statutes, Article 4512b.
- (5) Examinee—An individual who has been approved, admitted to, and/or has taken the examination given by the board.

[~~Executive Director —The Executive Director of the board.~~

] ~~[Licensee —An individual who has been granted a license to practice chiropractic by the Texas Board of Chiropractic Examiners and whose license is active and not under suspension.]~~

§71.2. Application for License.

(a) All individuals who wish to practice chiropractic in this state, and who are not otherwise licensed under law, must successfully pass an examination given by or at the direction of the board [~~Board~~].

(b) Individuals who seek to take such examination shall submit to the board [~~executive director~~] a written application, on a form provided by the board, accompanied by a nonrefundable fee for verification of educational courses/grades for college [~~credits verification fee of \$50;~~] and an examination fee, in amounts provided

by §75.7 of this title (relating to Fees). The information contained in the application shall be verified by affidavit of the applicant. Payment of fees [~~The college credit verification fee and the examination fee~~] shall be in the form of a bank-certified check, cashier's check, or money order [~~and shall be~~] payable to the order of the board.

(c) Applications for examination must be legibly printed in ink or typewritten on the board form, which will be furnished by the board [~~executive director~~] upon request.

(d) The completed application, required supporting materials, and fees must be received by the board [~~executive director~~] in verified form not later than 30 [~~60~~] days before the first day of the examination. Under extenuating circumstances, the board [~~Board or the Executive Director~~], at its [~~their~~] discretion, may accept material supporting the application later than 30 [~~60~~] days before the examination.

(e) The filing of an application and tendering of the fees to the board [~~Texas Board of Chiropractic Examiners~~] shall not in any way obligate the board to admit the applicant to examination until such applicant has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) Any person furnishing false information on such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the board of the falseness of such information, such license shall be subject to suspension, revocation or cancellation in accordance with the Chiropractic Act, §14a.

(g) [~~Any applicant required to take the examination any subsequent times after the second examination shall pay a fee of \$275 to the board.~~] No application fee for examination will be returned to any applicant after the application has been approved by the board, because of the decision of the applicant not to take [~~sit for~~] the examination [~~or failure~~] for any reason [~~to take the examination~~].

§71.3. *Qualifications of Applicants.*

All applicants must comply with the application process and qualification criteria of the Chiropractic Act [~~Texas Chiropractic Act, Article 4512b~~], §10.

§71.5. *Approved Chiropractic Schools and Colleges.*

(a) The board may annually review and approve those chiropractic schools whose graduates are eligible for examination and licensure under the provisions of Chiropractic Act [~~Texas Civil Statutes, Article 4512b~~], §10.

(b) (No change.)

§71.6. *Time, Place, and Scope of Examination.*

(a) All [~~Except as provided in subsection (j) of this section, all~~] applicants shall take and pass Parts I, II, III, IV and Physiotherapy of the National Board Examination and the board's Jurisprudence Examination.

(b) (No change.)

(c) Regular jurisprudence examinations for licensure shall be given during the calendar year at the discretion of the board. All examinations shall be conducted in the English language. The board shall set the date, time, and place of each examination. [~~A schedule of each examination session will be furnished to each examinee at the beginning of the examination.~~]

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

(g) Examinees [~~Applicants~~] shall not communicate any words or signs with another examinee [~~applicant~~] while the examina-

tion is in progress without the permission of the presiding examiner, nor leave the examination room except when so permitted by the presiding examiner. Violations of this rule shall subject the offender to expulsion.

(h) One member of the board or a designee of the board shall at all times be in the examination room while the examination is in progress and no persons except examinees [~~applicants~~], board members, employees of the board or persons having the express permission of the board shall be permitted in the examination rooms.

(i) When examination papers are delivered to the presiding examiner they become the property of the board or an agency designated by the board and shall not be returned to the examinee [~~applicant~~]. All test papers must be retained by the board or an agency designated by the board to be preserved for a period of one year after final grading in order to allow an examinee [~~a candidate~~] the opportunity to request an analysis of such person's performance, which request must be made in writing.

~~[(j) Until January 1, 1997, in lieu of the examinations required in subsection (a) of this section an applicant may take and pass, with a score of 75% on each examination, the board's Jurisprudence, X-ray Written, X-ray Interpretation, and Clinical Competency examinations and with a score of 375 on each part, Parts I, II, III, IV and Physiotherapy of the National Board of Examination.]~~

~~[(k) Each applicant having a passing score must request from the National Board that a true and correct copy of the score report showing the results of each part of the National Board Examination be sent to the board.~~

§71.7. *Jurisprudence Examination [Written Examinations].*

(a) An applicant may not take the Jurisprudence Examination unless he or she has complied with all the requirements in the Chiropractic Act, §10, including having fulfilled the educational requirements of §10 [~~An examinee shall comply with all requirements set forth in the Chiropractic Act of Texas, §10.~~].

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

(d) The discretion of the board on examination matters, including grades, is final.

§71.10. *Reexaminations.*

~~[(a) An examinee who fails to satisfactorily pass an examination shall be permitted to take a subsequent examination [upon such parts required in the original examination in which the examinee did not make a grade of 75% or better], provided the examinee applies for reexamination and pays a [\$75] reexamination fee as provided in §75.7 of this title (relating to Fees) [plus a professional fee of \$200 for a total of \$275 within one year from the date of the original examination, and provided further that the examinee takes the subsequent examination not later than one year from the date of the original examination.] An examinee shall be required to make a grade of 75% or better on any subsequent examination [in each of the parts of the subsequent examination].~~

~~[(b) An examinee who fails to satisfactorily pass an examination, who does not apply for reexamination and pay the required reexamination fee within one year, and who does not take a subsequent examination not later than one year from the date of the original examination, must retake and satisfactorily pass the examination consisting of all parts described in §71-6 of this title (relating to Time, Place, and Scope of Examination).]~~

(c) To be eligible for licensure, examinees in their final semester of chiropractic school must satisfactorily complete the remaining course of study resulting in graduation from chiropractic

college within six months from the date of successful completion of the examination for licensure. Failure to complete the course of study in the required time disqualifies the examinee for licensure until such time examinee retakes the examination and successfully passes all sections to once again be eligible for licensure.]

§71.11. Disqualification To Take Jurisprudence Examination.

(a) An applicant who wishes to take an examination given by the board but who has been disqualified for failure to comply with this chapter (relating to Applications and Applicants), or [these sections or] for failure to meet the requirements of the Chiropractic Act [Texas Civil Statutes, Article 4512b], shall be entitled to a hearing [in accordance with the procedural rules of the board] upon written request [for a hearing] to the board [made to the Board or Executive Director] by the applicant.

(b) The applicant shall be given at least ten days notice of the date, time, and place of the hearing unless such notice is waived in writing by the applicant. [If practicable, the hearing should be held before the time of the examination which applicant has applied to take.] A hearing under this section is subject to the Administrative Procedure Act. [The applicant will be entitled to appear at the hearing and present evidence and be examined under oath.]

This 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 July 13, 1998.

TRD-9811039

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 305-6700



22 TAC §71.8, §71.9

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

The repeals are proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and §10, which sets out the board's duties relating to licensing, including subsection (c) which expressly authorizes the board to establish by rule the conditions under which an applicant may be reexamined, and subsection (g) which gives the board the discretion to allow last semester applicants to take the board examination.

The following sections of Texas Civil Statutes, Article 4512b are affected by these proposed repeals: §4(c), 4a, 10.

§71.8. Practical and Theoretical Examinations.

§71.9. Grade 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 July 13, 1998.

TRD-9811038

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 305-6700



Part XXXVII. Texas Board of Orthotics and Prosthetics

Chapter 821. Orthotics and Prosthetics

22 TAC §§821.1-821.7, 821.9, 821.11, 821.13, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57

The Texas Board of Orthotics and Prosthetics (board) proposes new §§821.1-821.7, 821.9, 821.11, 821.13, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57 concerning the regulation and licensing of prosthetists and orthotists.

Specifically, the sections cover introduction; definitions; board operations; public information; fees; general application procedures; general licensing procedures; examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; licensing by exemption from the licensing requirements; license by examination under special conditions requiring application by the 181st day after rules are adopted; acquiring licensure as a uniquely qualified person; licensing by examination; licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; technician registration; temporary license; provisional license; student registration; accreditation of prosthetic and orthotic facilities; standards, guidelines, and procedures for a professional clinical residency; license renewal; continuing education; change of name and address; complaints; professional standards and disciplinary provisions; licensing persons with criminal backgrounds; default orders; surrender of license; suspension of license for failure to pay child support; civil penalty; program accessibility; consumer notification; and petition for the adoption of a rule.

The Orthotics and Prosthetics Act, Texas Civil Statutes, Article 8920, Senate Bill 291, 75th Texas Legislature, Regular Session, 1997, established the Texas Board of Orthotics and Prosthetics and delineated its duties and powers. These rules will further describe these duties and powers.

Donna Flippin, Executive Director, has determined that for the first five-year period the sections are in effect, fiscal implications will occur from enforcing or administering the sections as proposed. The new licensing and accreditation fees are projected to generate additional revenues of \$241,850 in fiscal year (FY) 1999, \$105,675 in FY 2000, \$180,425 in FY 2001, \$114,275 in FY 2002, and \$197,875 in FY 2003 for state government, which will offset the costs of administering these rules. No fiscal implications for local governments are expected.

Donna Flippin, Executive Director, has also determined that for each year of the first five years the sections are in effect, the anticipated public benefit as a result of enforcing or administering the sections will be better quality of care in the professions, higher standards of ethics, and a process by which comments,

concerns, and complaints about practitioners, ancillary personnel, and facilities will be accepted. The anticipated economic costs for persons who are required to comply with the sections as proposed include licensing, examination, and accreditation fees. Other indeterminate costs are expected, including the time and cost of gathering documentation that shows that a person qualifies for licensure or registration. The board is unable to determine the cost of complying with the accreditation standards and the cost of complying with the clinical residency standards due to many unknown variables. There may be costs to small and large businesses, including the licensing and registration fees for staff, the cost of compliance with facility accreditation standards, accreditation fees, and the cost of compliance with the professional residency requirements if the facility employs a person with a student registration. The costs will vary from situation to situation and will depend on the types of licenses needed by staff and the circumstances at each prosthetic or orthotic facility. Specific examination fees have not been determined at this time as the board has not entered into a contractual agreement for the examination. The examination fee will be determined by the examination contract, the cost of a cut-score study for Texas examinees, plus an administrative fee for handling examination applications, administering the examination, scoring, and reporting examination results. No anticipated impact on local employment is foreseen.

Comments on the proposal may be submitted to Donna S. Flippin, MHSM, Executive Director, Texas Board of Orthotics and Prosthetics, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-4520. Comments will be accepted for 30 days following this proposal's publication in the *Texas Register*. A public hearing has been scheduled for Friday, August 7, 1998, 9:00 a.m., at the San Antonio Airport Hilton, 611 NW Loop 410, San Antonio, Texas 78216.

The new sections are proposed under Texas Civil Statutes, Article 8920, §5(f), which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation and licensing of prosthetists and orthotists.

The new sections affect the Orthotics and Prosthetics Act, Texas Civil Statutes, Article 8920.

§821.1. Introduction.

(a) Purpose. This chapter implements the Texas Orthotics and Prosthetics Act, Texas Civil Statutes, Article 8920, relating to prosthetic and orthotic regulation.

(b) Content. These sections cover definitions; powers and duties of the board; organization of the board; fees; application requirements and procedures for licensing prosthetists and orthotists; application requirements for provisionally licensing prosthetists and orthotists; application requirements for temporary licensing prosthetists and orthotists; application requirements for licensing orthotist and prosthetist assistants; application requirements for registering orthotist and prosthetist technicians; application requirements for registering orthotist and prosthetist students; application requirements for accreditation of prosthetic and orthotic facilities; issuance of licenses, temporary licenses, registrations, and accreditations, exemptions to licensure, registration and accreditation; continuing education for license renewal; display of license; registration or accreditation; renewal of license, registration or accreditation; changes in name or address; professional and ethical standards; violations, complaints and disciplinary actions; licensing or registration of persons with criminal backgrounds; and petition for rule making.

§821.2. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in these rules.

(1) Act - The Orthotics and Prosthetics Act, Texas Civil Statutes, Article 8920.

(2) Ancillary patient care service - Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except: initial patient assessment; and initial and final evaluation and critique of fit and function of the orthosis or prosthesis.

(3) Board - The Texas Board of Orthotics and Prosthetics.

(4) CAAHEP - The Commission on Accreditation of Allied Health Education Programs.

(5) Clinical residency for an assistant - An assistant-level experience of at least 500 hours directly supervised by a practitioner or a licensed assistant.

(6) Clinical residency for a professional - A professional practitioner-level experience supervised by a practitioner in an accredited facility.

(7) Clinical resident - A person who is completing a clinical residency for a professional or a clinical residency for an assistant.

(8) Comprehensive orthotic care - Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthoses including plastic forming, metal contouring, upholstery and assembling; the fitting and critique of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the instructing of patients in the use and care of the orthoses; the maintaining of current encounter notes and patient records. The practitioner with comprehensive orthotic care experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(9) Comprehensive prosthetic care - Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, upholstery, assembly, and aligning; the fitting and critique of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with comprehensive prosthetic care experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included:

wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(10) Critical care events - Initial patient assessment, initial evaluation and critique of fit and function, or final evaluation and critique of fit and function.

(11) Custom-fabricated - A prosthesis or orthosis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual following sound biomechanical principles.

(12) Custom-fitted - A prosthesis or orthosis prescribed, adjusted, fitted, and aligned for a specific individual according to sound biomechanical principles.

(13) Department - Texas Department of Health.

(14) Direct supervision - Supervision provided a clinical resident throughout the fitting and delivery process, including oversight of results and signing-off on all aspects of fitting and delivery before dismissal of the patient. The supervisor must review, edit, and countersign patient care notes made by the clinical resident.

(15) Indirect supervision - Supervision provided to a clinical resident by a practitioner or licensed assistant (if the clinical residency is for an assistant) who is available to provide oversight within sixty minutes during the fitting and delivery process. Indirect supervision is not appropriate for critical care events.

(16) License - Includes a license, registration, certificate, accreditation, or other authorization issued under this Act to engage in an activity regulated under this Act.

(17) Licensed orthotist (LO) - A person licensed under this Act who practices orthotics, and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthoses," "orthotic," or a similar title or description of services.

(18) Licensed orthotist assistant (LOA) - A person licensed under this Act who helps and is supervised at a prosthetic and orthotic facility by a licensed orthotist responsible for the assistant's acts.

(19) Licensed prosthetist (LP) - A person licensed under this Act who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetist," "prostheses," "prosthetic," "artificial limbs," or a similar title or description of services.

(20) Licensed prosthetist assistant (LPA) - A person licensed under this Act who helps and is supervised at a prosthetic and orthotic facility by a licensed prosthetist responsible for the assistant's acts.

(21) Licensed prosthetist/orthotist (LPO) - A person licensed under this Act who practices both prosthetics and orthotics and represents the person to the public by a title or description of services that includes the terms "prosthetics/orthotics," "prosthetist/orthotist," "prosthetic/orthotic," "artificial limbs," "brace," or a similar title or description of services.

(22) Licensed prosthetist/orthotist assistant (LPOA) - A person licensed under this Act who helps and is supervised at a prosthetic and orthotic facility by a licensed prosthetist orthotist or a licensed prosthetist and licensed orthotist responsible for the assistant's acts.

(23) Licensee - Includes a person or facility to whom a license, registration or accreditation was issued, to engage in an activity regulated under this Act.

(24) Orthosis - A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corsets, arch support, low-temperature plastic splints, a truss, elastic hose, cane, crutch, soft cervical collars, orthosis for diagnostic or evaluation purposes, dental appliance, or other similar devices carried in stock and sold by a drugstore, department store, or corset shop.

(25) Orthotic facility - A physical site, including a building or office, where the orthotic profession and practice normally take place.

(26) Orthotics - The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician, chiropractor, or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(27) Orthotist in charge - An orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the orthotic practice in the facility.

(28) Person - An individual, corporation, partnership, association, or other organization.

(29) Practitioner - Until October 1, 1998, a person who is eligible for licensure under the Act as a prosthetist, orthotist, or prosthetist/orthotist. After October 1, 1998, a person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(30) Profession of prosthetics or orthotics - Allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Prosthetic and orthotic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(31) Prosthesis - A custom-fabricated or fitted medical device that is not surgically implanted and replaces a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(32) Prosthetics - The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician chiropractor, or podiatrist.

(33) Prosthetic facility - A physical site, including a building or office, where the profession and practice of prosthetics normally take place.

(34) Prosthetist in charge - A prosthetist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(35) Registered orthotic technician - A person registered under this Act who fabricates, assembles, and services orthoses under the direction of a licensed orthotist or licensed orthotist assistant responsible for the acts of the technician.

(36) Registered prosthetic technician - A person registered under this Act who fabricates, assembles, or services prostheses under the direction of a licensed prosthetist or licensed prosthetist assistant responsible for the acts of a technician.

(37) Registered prosthetic/orthotic technician - A person registered under this Act who fabricates, assembles, or services prostheses and orthoses under the direction of an orthotist and licensed prosthetist, a licensed prosthetist orthotist, or a licensed orthotist assistant, licensed prosthetist assistant, or licensed prosthetist orthotist assistant responsible for the acts of the technician.

(38) Texas resident - A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

§821.3. Board's Operation.

(a) Purpose. This section sets out the organization and administration and other general procedures and policies governing the operation of the board.

(b) Officers.

(1) Presiding officer.

(A) The presiding officer shall preside at board meetings where he or she is present and perform the duties prescribed by law or board rules.

(B) The board authorizes the presiding officer to make day-to-day minor decisions regarding board activities to aid the responsiveness and effectiveness of the board.

(C) The presiding officer shall serve as an ex-officio member of all committees except the Complaint Liaison Group.

(2) Secretary.

(A) The secretary shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer.

(B) In case the office of presiding officer becomes vacant, the secretary shall serve in that position until a successor is elected.

(c) Meetings.

(1) The board shall hold at least one regular meeting and additional meetings as necessary during each year ending on August 31, at those designated dates, places, and times as the presiding officer may determine.

(2) The presiding officer may call special meetings at those times, dates, and places as become necessary for board business.

(3) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Government Code, Chapter 551.

(d) Quorum. A quorum of four board members is necessary to conduct official business.

(e) Transaction of official business.

(1) The board may transact official business only when in a legally constituted meeting with a quorum present.

(2) Statements or actions of board or staff members shall not bind the board unless a statement or action is in the pursuance of specific instructions of the board.

(3) Board action shall require a majority vote of those members present and voting.

(f) Policy against discrimination. The board shall discharge its statutory authority without discrimination based on a person's race, color, disability, sex, religion, age, or national origin.

(g) Impartiality. A board member who is unable to be impartial in board proceedings, such as that concerning an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this to the board and shall not participate in board proceedings involving that individual.

(h) Attendance.

(1) Board members shall attend all regularly scheduled board and committee meetings.

(2) A board member may be removed from the board if the member is absent for more than 50% of the regularly scheduled board meetings the member is eligible to attend during a calendar year.

(3) The board may report the attendance records of members to the governor and the Texas Sunset Advisory Commission.

(i) Reimbursement for expense.

(1) A board member is entitled to a lodging and meals per diem payment at the board member rate set by the current General Appropriations Act passed by the Texas Legislature.

(2) A board member is entitled to compensation for transportation expenses, at the rate designated for state employees by the current General Appropriations Act passed by the Texas Legislature.

(3) Payment to board members of per diem and transportation expenses shall be requested on official state travel vouchers that the executive director has approved.

(4) A board member is entitled to a compensatory per diem as authorized by Government Code, §659.032.

(5) The associate commissioner for health care quality and standards of the department, or his or her designee, shall approve board-approved requests prepared on appropriate forms from staff for out-of-state travel for board activities.

(6) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show benefit to the state.

(j) Rules of order. The latest edition of Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by these rules.

(k) Agendas.

(1) The executive director shall prepare and submit to the board members, before each meeting, an agenda that includes items requested by members, items required by law, unfinished business, and other matters of board business that the presiding officer has approved for discussion.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State in accordance with the Open Meetings Act, Government Code, Chapter 551.

(l) Minutes.

(1) Drafts of the meeting minutes shall be forwarded to the board members for review and comments before board approval.

(2) After approval by the board, the minutes of board meetings are official only when affixed with the original signatures of the presiding officer and the executive director.

(3) The official minutes of board meetings shall be kept in the board office and shall be available to anyone wanting to examine them during regular office hours.

(m) Elections.

(1) At the meeting held nearest to August 31 of the odd-numbered years, the board shall elect by a majority vote of those members present and voting, a presiding officer and a secretary.

(2) A vacancy that occurs in the offices of presiding officer and secretary shall be filled, for the duration of the unexpired term, by a majority vote of those members present and voting at the next board meeting.

(3) A board member shall not serve more than two consecutive terms in the office of presiding officer or secretary.

(n) Committees.

(1) The board, or the presiding officer with the approval of the board, may establish committees deemed necessary to help the board in carrying out its duties and responsibilities.

(2) The presiding officer may appoint the members of the board to serve on committees and may designate the committee presiding officer.

(3) The presiding officer of the board may appoint nonboard members to serve as committee members on a consultant or voluntary basis, subject to board approval.

(4) Committee chairs shall make regular reports to the board in interim written reports and/or at regular meetings, as needed.

(5) Committees shall direct reports or other materials to the executive director for distribution.

(6) Committees shall meet when called by the presiding officer of the committee or when so directed by the board.

(7) At a minimum, the presiding officer shall appoint the following standing committees.

(A) The rules committee shall be composed of two board members who are licensed prosthetists or licensed orthotists and one public member of the board. The committee shall review the board rules at least once annually to ensure that the rules are current in relation to prosthetic and orthotic practice. The committee may recommend adoption of rules to the board. The committee shall consider petitions for adoption of rules and shall recommend disposition of these petitions to the board.

(B) The education and facility standards committee shall be composed of three board members who are licensed prosthetists or licensed orthotists. The committee shall periodically review board rules relating to educational standards for training students in prosthetic and orthotic practices, rules relating to continuing education, and rules relating to facility accreditation. The committee may recommend adoption of rules to the rules committee.

(C) The consumer information committee shall be composed of two board members who are licensed prosthetists or licensed orthotists and one public member of the board. The com-

mittee shall recommend to the board for approval, action regarding proposed publications. The committee shall recommend to the executive director the publication of board approved consumer information related to the board and shall guide the preparation of consumer information related publications.

(o) Official seal. The board shall adopt an official seal. Only the board may use the official board seal.

(p) Consumer information. The executive director with the approval of the board shall publish information of consumer interest, which describes the regulatory functions of the board, board procedures to handle and resolve consumer complaints, and the prosthetic and orthotic professions.

§821.4. Public Information.

(a) Public Information Committee. The board shall maintain the Public Information Committee as a standing and permanent committee of the board. The responsibilities and authority of the Public Information Committee include those duties and powers set forth in the following, and other responsibilities and authority that the board from time to time may delegate:

(1) develop informational brochures for distribution to the public;

(2) review and make recommendations to the board regarding press releases, newsletters, and other publications;

(3) exhibit display booths at conventions;

(4) study and make recommendations to the board regarding public information or public relations; and

(5) make recommendations to the board regarding matters reported to the Public Information Committee.

(b) Requests for information. The public may obtain copies of board newsletters, brochures, pamphlets, press releases and other board publications by written request to the attention of the executive director or the Public Information Committee at the board's current mailing address.

(1) Public records of the board may be obtained to the extent allowed by law through a written request pursuant to the Open Records Act, Government Code, Chapter 552 submitted to the attention of the executive director at the board's current mailing address.

(2) Providing written materials or records provided in carrying out a request made under these rules shall be subject to applicable charges. The Texas Department of Health (department) will establish the charge to persons requesting copies of the Texas Board of Orthotics and Prosthetics public records.

(3) Charges for routinely requested items shall be based upon the charges established by the department. A current price list may be requested from the executive director of the board. Upon written request, the board shall provide copies of routinely requested items, which shall include, but not be limited to, the following:

(A) the Orthotics and Prosthetics Act;

(B) board rules;

(C) board meeting agendas;

(D) board meeting minutes; or

(E) files of individual licensees.

(4) Upon written request, the executive director will certify public records of the board. The cost for certifying copies

of public records provided pursuant to the Open Records Act shall be \$5.00 per record or document. This cost shall be in addition to other costs charged for providing the requested document or record, including, but not limited to, copying, retrieving, or mailing of the document or record.

(5) Copies of public records shall be furnished without charge or at a reduced charge if the executive director determines that waiver or reduction of the fee is in the public interest, and that furnishing the information can be considered as primarily benefiting the public.

(c) Official records.

(1) Official records of the board including application materials shall be open for inspection during regular office hours, except files containing information considered confidential under the provisions of the Open Records Act, Government Code, Chapter 552, and the Family Educational Rights and Privacy Act of 1974, 20 United States Code §1232g.

(2) A person wanting to examine official records shall be required to identify himself and sign statements listing the records requested and examined.

(3) Official records may not be taken from board offices. However, persons may obtain photocopies of files upon written request and by paying the cost per page set by the department. Payment shall be made before release of the records.

§821.5. Fees.

(a) General. Unless otherwise specified, the fees established in this section must be paid to the board before a license, registration, or accreditation is issued. Fees may be submitted as a personal check, business check, money order, or certified check if paid by mail. If submitted in person, the cashier may accept cash. Fees are non-refundable.

(b) Schedule of fees. The board has established the schedule of fees as follows:

(1) prosthetist or orthotist license or license renewal - \$300;

(2) prosthetist/orthotist license or license renewal - \$400;

(3) prosthetist or orthotist assistant license or license renewal - \$200;

(4) prosthetist/orthotist assistant license or license renewal - \$250;

(5) prosthetic and orthotic technician registration or registration renewal - \$75;

(6) prosthetic/orthotic technician registration or registration renewal - \$100;

(7) prosthetic and orthotic student registration or registration renewal - \$100;

(8) prosthetic/orthotic student registration or registration renewal - \$150;

(9) prosthetist or orthotist temporary license or temporary license renewal - \$150;

(10) prosthetist/orthotist temporary license or temporary license renewal - \$200;

(11) prosthetist or orthotist provisional license or provisional license renewal - \$300;

(12) prosthetist/orthotist provisional license or provisional license renewal - \$400;

(13) prosthetic and orthotic facility accreditation or accreditation renewal - \$350;

(14) prosthetic/orthotic facility accreditation or accreditation renewal - \$500;

(15) license, registration, or accreditation duplicate or replacement - \$25;

(16) orthotic examination - shall be determined by the Texas Department of Health (department) and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee;

(17) prosthetic examination - shall be determined by the department and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee;

(18) prosthetic/orthotic examination (when taken on the same or consecutive days) - shall be determined by the department and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee; and

(19) returned check - \$25.

(c) Returned checks. Returned checks will be subject to the following procedure:

(1) A licensee, registrant, or accredited facilities, whose check is returned due to insufficient funds, account closed, payment stopped, or other reason, shall remit a money order or check for guaranteed funds to the board within 30 days of the date of the board's notice.

(2) The application or renewal shall be considered incomplete until the replacement fee has been received and cleared through the appropriate financial institutions.

(3) If a license, registration, accreditation, or renewal has already been issued, it shall be invalid until the replacement fee is received.

(4) If a money order or check for guaranteed funds is not received within thirty days of the date of the board's notice, the board shall notify the employer of the person whose application is incomplete or whose license, registration, or accreditation has been invalidated due to a returned check.

(d) Review of the fee schedule. The executive director shall make periodic reviews of the fee schedule and recommend adjustments necessary to provide sufficient funds to meet the expenses of the board without creating an unnecessary surplus. Adjustments shall be made through rule amendments approved by the board.

§821.6. General Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures, provided for in the Act, under §§23-25 and §§28-30. Unless the context clearly shows otherwise, use of the terms license, licensure, and licensing shall apply to both licenses and registrations.

(b) General.

(1) Unless otherwise indicated, an applicant must submit the required information and documentation of credentials on official board forms.

(2) The board office will accept completed applications from persons seeking licensure under the Act.

(3) The board will not consider an application as officially submitted until the applicant pays the application fee. The initial licensing fee must accompany the application form, as set out in §821.5 of this title (relating to Fees).

(4) The executive director shall review the applications for conformity with the rules governing applications. The executive director will send a notice listing the additional materials required to applicants who do not complete the application. An application not completed within 30 days after the date of the board's notice may be voided.

(5) Family Code §231.02 requires the disclosure of the applicant's social security number. Social security numbers are used for identification purposes and are confidential except to the child support enforcement division of the Office of the Attorney General.

(c) Required application materials.

(1) The application form shall contain:

(A) specific information regarding personal data, social security number, birth date, place of employment, a list of all previous jobs held during the six-year period prior to the date of application to the board, licenses and certifications issued to the applicant, misdemeanor and felony convictions, educational and training background;

(B) information regarding Texas residency at the time of application, if required to qualify for licensure;

(C) specific and complete information regarding prosthetic and/or orthotic work experience to include:

(i) verifiable information regarding length of time the applicant provided comprehensive prosthetic or orthotic care as defined in §821.2 of this title (relating to Definitions) in the State of Texas and outside the State of Texas;

(ii) verifiable information regarding length of the applicant experience as a prosthetic or orthotic assistant or technician; and

(iii) names and addresses of two persons who are either a licensed physician or a practitioner, as set out in §821.2 of this title, who will attest to the applicant's comprehensive prosthetic and/or orthotic care.

(D) a statement that the applicant has read and agrees to abide by the Orthotics and Prosthetics Act and board rules;

(E) the applicant's permission for the board to obtain information or references it deems fit to decide the applicant's qualifications and fitness before or after the board issues the license;

(F) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information that is material in determining the applicant's qualifications may result in the voiding of the application and failure to grant a license or the revocation of a license issued;

(G) a statement that the applicant shall advise the board of his or her current mailing address within 30 days of an address change;

(H) a statement that the applicant, if issued a license, shall return the license to the board upon the surrender, revocation or suspension of the license;

(I) a statement that the applicant understands that fees submitted in the licensure process are not refundable, unless

the processing time is exceeded without good cause as set out in subsection (i)(2)(A-B) of this section;

(J) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are not returnable; and

(K) the signature of the applicant, dated and notarized.

(2) The board will accept as proof of completion of a degree or course work an official transcript from regionally accredited college or university.

(3) Applicants shall be responsible for submitting board reference forms from a total of two licensed physicians or practitioners who can attest to the applicant's skills and professional standards of comprehensive prosthetic and/or orthotic practice.

(4) One passport-type photograph, 1-1/2 inches by 1-1/2 inches minimum in size, taken within the two year period before application, signed on the reverse side with the applicant's signature as it appears on the application.

(5) Information concerning licenses, certificates or registrations issued to the applicant by other organizations, states, territories, or jurisdictions on official board forms.

(6) The assistant applicant must sign a statement acknowledging that he or she may only practice within their scope of practice, under the clinical supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the assistant is subject to disciplinary action as set forth in §821.39 of this title (relating to Complaints). This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(7) The technician applicant must sign a statement acknowledging that he or she may only practice within their scope of practice, under the clinical supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the technician is subject to disciplinary action as set forth in §821.39 of this title. This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(8) At the time of application, an applicant for a license as a prosthetist, orthotist, or prosthetist/orthotist must submit with the application the names of assistants, technicians and clinical residents who provide prosthetic and orthotic services under the applicant's supervision or direction. The licensee shall notify the board, in writing within 30 days of the event, if one or more assistants, technicians or clinical residents are no longer under the licensee's supervision or direction, or if the licensee supervises or directs one or more additional assistants, technicians, or clinical residents.

(d) Optional application materials. Applicants may submit curriculum vitae, a resume, and other documentation of credentials. Those items shall not substitute for documents or information required by this section.

(e) Disapproved applications. Should the board disapprove an application, the reasons for disapproval will be stated in writing. The applicant may file further information for the board's consideration regarding the applicant's qualifications for the license. The board may disapprove an application if the applicant:

(1) has not met the eligibility and application requirements for the license for which application was made;

(2) has failed to pass the examination prescribed in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist), if required to qualify for the license for which application was made;

(3) has failed to remit required fees;

(4) has failed or refused to properly complete or submit application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or other form or documentation required by the board to verify the applicant's qualifications for a license;

(5) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;

(6) has made or filed a false report or record made in the person's capacity as a prosthetist, orthotist, prosthetist/orthotist, orthotist assistant, prosthetist assistant, prosthetist/orthotist assistant, orthotist technician, prosthetist technician, prosthetist/orthotist technician;

(7) has intentionally or negligently failed to file a report or record required by law;

(8) has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law;

(9) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice of established by the board in §821.41 of this title (relating to Professional Standards and Disciplinary Provisions);

(10) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness.

(11) has failed to report the violation of the Act by another person to the department;

(12) has violated a provision of the Act, a rule adopted under the Act, an order of the board previously entered in disciplinary proceedings, or an order to comply with a subpoena issued by the board;

(13) has had a license revoked, suspended, or otherwise subjected to adverse action or been denied a license by another licensing authority in another state, territory, or country;

(14) has been convicted of or pled nolo contendere to a crime directly related to prosthetic and/or orthotic practices;

(15) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs; or

(16) has committed a prohibited act under the Act §23, on or after October 1, 1998.

(f) If the board determines that the application should not be approved, the executive director shall give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing as set out in §821.39(h) of this title. Within ten days after receipt of the written notice, the applicant shall give written notice to the executive director to waive or request a hearing. If the applicant fails to respond within ten days after receipt of the notice of opportunity or if the applicant notifies the executive director that the hearing be waived, the department shall disapprove the application.

(g) An applicant whose application has been disapproved under subsection (e)(4)-(16) of this section may reapply after one year from the disapproval date and shall submit a current application, the application fee and proof, satisfactory to the board, of compliance with the requirements of these rules and the provisions of the Act in effect at the time of reapplication.

(h) Defaulters on Texas guaranteed student loans. The board will issue an initial license to a qualified applicant who has defaulted on a Texas guaranteed student loan. The board will not renew the license until a repayment plan has been reached with the Texas Guaranteed Student Loan Corporation (TGS LC) and a copy of the certification of the repayment agreement from TGS LC is filed with the board office.

(i) Application processing.

(1) The board shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from receipt of a completed application and acceptance date for filing or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

(i) letter of acceptance of application for renewal - 21 days; and

(ii) letter of application deficiency - 21 days.

(B) The following times shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

(i) letter of approval - 42 days; and

(ii) letter of denial of license or registration - 90 days.

(2) The board shall comply with the following procedures in processing refunds of fees paid to the board.

(A) In the event an application is not processed in the times stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of fees paid in that particular application process. The applicant should apply to the executive director for reimbursement. If the executive director does not agree that the time has been violated or finds that good cause existed for exceeding the time, the request will be denied.

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

(3) If the executive director denies a request for reimbursement under paragraph (2) of this subsection the applicant may appeal to the board for a timely resolution of a dispute arising from a violation of the times. The applicant shall give the board written notice, at the board's address, that the applicant requests full reimbursement of fees paid because his or her application was not processed within the applicable time. The executive director shall

submit a written report of the facts related to the processing of the application and of good cause for exceeding the applicable time. The board shall provide written notice of the decision to the applicant and the executive director. The board shall decide an appeal in favor of the applicant if the applicable time was exceeded and good cause was not established. If the board decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) The times for contested cases related to the denial of licensure, registration or renewal are not included with the times listed in paragraph (1) of this subsection. The time for conducting a contested case hearing runs from the date the board receives a written hearing request until the board's decision is final and appealable. A hearing may be completed within three to nine months, but may be shorter or longer depending on the particular circumstances of the hearing, the workload of the department and the scheduling of board meetings.

§821.7. General Licensing Procedures.

(a) Purpose. The purpose of this section is to establish the licensing procedures of the board. Unless the context clearly shows otherwise, use of the terms license or licenses, shall apply to both licenses and registration, and the term licensee shall apply to both licensees and registrants.

(b) Issuance of licenses.

(1) The board will send applicants whose application has been approved and who have passed the examination (if applicable), a license containing the licensee's name, a license number and expiration date.

(2) A license shall be issued for one year plus an additional period ending on the last day of the licensee's birth month. A license shall not be issued for less than 13 months, nor more than two years. A license may be renewed on or before the expiration date in accordance with §821.33 of this title (relating to License Renewal). The renewal period shall be for a two year period, unless otherwise specified.

(3) A provisional license shall be issued for a two-year period and may be renewed. The board shall not issue or review a provisional license on or after January 1, 2005.

(4) A temporary license shall be issued for a one year period, and may be renewed for not more than one year.

(5) A student registration shall be issued or renewed for a two year period, unless issued or renewed under §821.27 subsection (e) of this title (relating to Student Registration).

(c) License and license display.

(1) The signature of the presiding officer shall be on the license.

(2) Licenses issued by the board remain the property of the board and must be surrendered to the board on demand.

(3) Licenses must be displayed appropriately and publicly as follows.

(A) The license shall be displayed in the primary office or place of employment of the licensee.

(B) Lacking a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry the license, or obtain duplicate licenses to display at each location.

(4) Neither the licensee nor anyone else shall display or carry a copy of a license instead of the original document.

(d) Copying the license.

(1) The licensee has the responsibility to protect his or her license from loss and potentially fraudulent or unlawful use.

(2) A licensee shall only allow his or her license to be copied for licensure verification by employers, licensing boards, professional organizations and third party payors for credentialing and reimbursement purposes. The licensee shall clearly mark copies with the word "COPY" across the face of the document. Other persons and/or agencies may contact the board's office in writing or by phone to verify licensure.

(e) Lost or destroyed license. The board shall replace lost, damaged, or destroyed licenses upon receipt of a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or by the damaged certificate or card.

(f) Duplicate license. The board shall issue a duplicate license upon receipt of a written request from the licensee and payment of the duplicate license fee.

(g) License alterations. Neither the licensee nor anyone else shall make alterations to a license or a copy of a license.

§821.9. Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Purpose. The section on licensure examination sets out the board's rules governing the administration, content, grading, and other procedures for examination for licensure.

(b) Required examination. To qualify for a license, an applicant must pass a competency examination, unless the applicant qualified for licensure under §821.11 of this title (relating to Licensing by Exemption from the License Requirements), §821.15 of this title (relating to Acquiring Licensure as a Uniquely Qualified Person), or the applicant holds a license in a state that has licensing requirements that are equal to or exceed the requirements of §821.17 of this title (relating to Licensing by Examination).

(c) Forms of examination. The examination shall be offered in prosthetics or orthotics. The examination may be prepared by the board or prepared by another entity and administered by the board or its designee.

(d) Applications for examination.

(1) The board shall notify an applicant whose application has been approved. The board or its designee shall forward an examination registration form to the approved applicants.

(2) An applicant who wishes to take a scheduled examination must complete the registration form and return it with the appropriate fee to the board or its designee by the established deadline.

(3) Applicants who fail to apply for and take the licensure examination within a three year period after the executive director mails an examination approval notice to him or her may have that approval withdrawn by action of the board.

(e) Locations. Examinations administered by the board or its designee will be held in Austin and at locations to be announced by the board or its designee.

(f) Frequency. The examinations shall be administered to qualified applicants at least twice per year.

(g) Grading. The board or its designee shall establish cut scores and grade examinations administered by the board or its designee.

(h) Results.

(1) If the examination is graded or reviewed by a national or state testing service, the board shall notify the examinees of the examination results within 14 days of the date the board receives the results from the testing service.

(2) If examination results will be delayed for more than 90 days after the examination, the board shall notify the applicants of the reason for the delay before the ninetieth day.

(3) The official notice of results to applicants shall be stated as "pass" or "fail" regardless of whatever numerical or other scoring system the national or state testing service may use in arriving at examination results.

(i) Failures.

(1) An applicant who fails the examination prescribed by the board may take a subsequent examination after paying the examination fee.

(2) If requested in writing, the board shall furnish an applicant who fails an examination an analysis of performance.

(3) An applicant who fails the examination three times shall have his application denied unless the applicant:

(A) furnished the board an official transcript from an accredited college or university indicating completed course work taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s); or

(B) furnished the board with evidence that the applicant completed a 40-hour planned, structured and personalized tutorial in each area of weakness directed and supervised by a licensed orthotist(s), prosthetist(s) or prosthetist orthotist(s). The area of licensure for the supervisor(s) shall match the type of examination taken by the applicant. The tutorial may include classroom instruction, reading, research, continuing education activities, and test material review. The tutorial may include the clinical application and patient care if the applicant holds a current student registration, or if the applicant undertakes the tutorial outside the state of Texas. Acceptable evidence shall include a letter from the tutor describing the tutorial completed by the student, including details such as the number of hours completed, the dates attended, subject matter covered, and the type of tutorials employed.

(4) An applicant who completes course work as described in paragraph (3) of this section must file an updated application for examination with the application fee.

(j) Qualifications for initial examination. The applicant must:

(1) have completed the requirements described in §821.13 of this title (relating to License by Examination under Special Conditions Requiring Application by the 181st Day After Rules Are Adopted);

(2) have completed the requirements described in §821.17 of this title (relating to Licensing by Examination); or

(3) be within 700 hours of completing the clinical residency requirements as described in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical

Residency). The entire clinical residency must be completed before the applicant may be issued a license.

§821.11. Licensing by Exemption from the License Requirements.

(a) General. The provisions of this section apply to applicants for a license by exemption from the license requirements. A person to whom a license is issued under this section is entitled to the license privileges as if the person fulfilled the academic, clinical residency or experience, and examination requirements. A person to whom a license is issued under this section is not subject to the requirements relating to academic education, clinical residency or clinical experience, or examination.

(b) License renewal. A person to whom a license is issued under this section is subject to the renewal requirements adopted by the board. A license issued under this section may be renewed before expiration. A license may not be renewed or reinstated if the license has been expired for more than one year.

(c) Qualifications for licensing without academic education, clinical residency or experience, and examination. The board shall grant a license to an applicant who meets the following qualifications.

(1) The applicant must apply for a license on or before the 181st day after rules are adopted.

(2) At time of application for a license, the applicant must be a Texas resident, as defined in §821.2 (relating to Definitions).

(3) The applicant must provide evidence, satisfactory to the board, that the person applying for:

(A) a prosthetic and orthotic license, provided comprehensive prosthetic and orthotic care as defined in §821.2 of this title:

(i) for at least three years preceding the date of application; and

(ii) in Texas for the one year period immediately preceding the date of application; or

(B) a prosthetic and orthotic license, provided comprehensive prosthetic and orthotic care as defined in §821.2 of this title:

(i) for at least six years preceding the date of application; and

(ii) in Texas for the one year period immediately preceding the date of application.

(d) Prerequisites. A person applying for a license under this section must submit application forms prescribed by the board and submit the applicable fees as set out in §821.5 of this title (relating to Fees) before a license can be issued.

(e) Applicant responsibility. The applicant is responsible for submitting to the board documentation of having provided comprehensive prosthetic and orthotic care in Texas during the qualifying period. Evidence may include, but is not limited to, affidavits from supervisors, employers, referring physicians, and patients, W-2 forms, information relating to professional accreditations or certifications held by the applicant, and affidavits from a total of two licensed physicians or practitioners who are familiar with the applicant's practice.

(f) Failure to qualify for a license. An applicant who fails to qualify for a license under this section may apply for licensure by examination.

§821.13. License by Examination under Special Conditions Requiring Application by the 181st Day After Rules Are Adopted.

(a) General. The provisions of this section apply to applicants for a license by examination.

(b) Examination required. A license will not be issued by the board to the applicant to practice prosthetics or orthotics, or both, until the applicant passes an examination prescribed by the board as described in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist).

(c) Qualifications for licensing by examination. The board shall grant a license to an applicant who applies for examination on or before the 181st day after rules are adopted. The applicant must provide evidence, satisfactory to the board, that the person:

(1) applying for a prosthetic and orthotic license provided comprehensive prosthetic and orthotic care, as defined in §821.2 of this title (relating to Definitions), in Texas for at least one year preceding the date of application; or

(2) applying for a prosthetic and orthotic license provided comprehensive prosthetic and orthotic care, as defined in §821.2 of this title, in Texas for at least one year preceding the date of application.

(d) Applicant responsibility. The applicant is responsible for submitting to the board documentation of providing comprehensive prosthetic and orthotic care in Texas during the qualifying period. Evidence may include, but is not limited to, affidavits from supervisors, employers, referring physicians, and patients, W-2 forms, information relating to professional accreditations or certifications held by the applicant, and affidavits from a total of two licensed physicians or practitioners who are familiar with the applicant's practice.

(e) Temporary license available. An applicant who qualifies for a temporary license may apply for a temporary license as described in §821.23 of this title (relating to Temporary License) while waiting to be examined or while waiting for examination results.

§821.15. Acquiring Licensure as a Uniquely Qualified Person.

(a) Purpose. The purpose of this section is to describe the unique qualifications a person must possess to qualify for licensure as a prosthetist, orthotist or prosthetist/orthotist under the Orthotics and Prosthetics Act (Act) §23(e).

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is as qualified to perform prosthetic and/or orthotic procedures as those persons who obtain licensure pursuant to the Act §23(a).

(1) The board, or a committee of the board, will determine whether a person is uniquely qualified on a case-by-case basis based on the information supplied by the applicant and other information deemed relevant by the board.

(2) The board will not approve a person as possessing unique qualifications who has not provided comprehensive orthotic care or comprehensive prosthetics care to the extent required by the Act §23(d) and §821.11 of this title (relating to Licensing by Exemption from the License Requirements).

(c) Application procedures. A person possessing unique qualifications shall comply with §821.6 of this title (relating to General Application Procedures).

(d) Issuance of license. A license issued under this section is valid for one year plus an additional period ending on the last day of the licensee's birth month.

(e) Renewal of license. A license issued under this section may be renewed on or before the expiration date, provided the licensee complies with §821.33 of this title (relating to License Renewal) and §821.35 of this title (relating to Continuing Education). Academic, clinical training or examination requirements may not be imposed as a condition of renewal.

§821.17. Licensing by Examination.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for licensure as a prosthetist, orthotist, or prosthetist/orthotist.

(b) General requirements. To qualify for a license an applicant must successfully complete:

(1) the academic requirements for the requested license;

(2) the clinical residency requirements for the requested license; and

(3) the examination, as set out in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) specific to the requested license.

(c) Academic requirements for an orthotist license. The applicant must hold:

(1) a bachelor's degree in:

(A) prosthetics and orthotics from a college or university educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(B) any subject and an orthotic certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards;

(2) until January 1, 2005, an associates degree including a minimum:

(A) six semester hours of anatomy and physiology;

(B) six semester hours of physics or chemistry; and

(C) three semester hours of trigonometry or higher mathematics.

(d) Academic requirements for a prosthetist license. The applicant must hold:

(1) a bachelor's degree in:

(A) prosthetics and orthotics from a college or university educational program accredited by CAAHEP while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(B) any subject and a prosthetics certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(2) until January 1, 2005, an associates degree including a minimum:

(A) six semester hours of anatomy and physiology;

(B) six semester hours of physics or chemistry; and

(C) three semester hours of trigonometry or higher mathematics.

(e) Academic requirements for a prosthetist/orthotist license. The applicant must hold:

(1) a bachelor's degree in:

(A) prosthetics and orthotics from a college or university educational program accredited by the CAAHEP while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(B) any subject and a prosthetic certificate and an orthotic certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(2) until January 1, 2005, an associates degree including a minimum:

(A) six semester hours of anatomy and physiology;

(B) six semester hours of physics or chemistry; and

(C) three semester hours of trigonometry or higher mathematics.

(f) Clinical residency requirements for the orthotist license.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical orthotic residency as described in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency).

(2) If any of the clinical orthotic residency is completed on or after January 1, 1999, the supervising orthotist(s) or prosthetist/orthotist(s) must have been licensed in accordance with this title.

(g) Clinical residency requirements for the prosthetist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical prosthetic residency as described in §821.31 of this title.

(2) If any of the clinical prosthetic residency is completed on or after January 1, 1999, the supervising prosthetist(s) or prosthetist/orthotist(s) must have been licensed in accordance with this title.

(h) Clinical residency requirements for the prosthetist/orthotist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical orthotic residency and not less than 1900 hours of clinical prosthetic residency as described in §821.31 of this title.

(2) If any of the clinical prosthetic/orthotic residency is completed in Texas on or after January 1, 1999, the supervising prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) must have been licensed in accordance with this title.

(i) Additional clinical residency requirements in prosthetics for an applicant licensed as an orthotist.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical prosthetic residency as described in §821.31 of this title.

(2) If any of the clinical prosthetic residency is completed in Texas on or after January 1, 1999, the supervising prosthetist(s) or prosthetist/orthotist(s) must have been licensed in accordance with this title.

(j) Additional clinical residency requirements in orthotics for an applicant licensed as a prosthetist.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical orthotic residency as described in §821.31 of this title.

(2) If any of the clinical orthotic residency is completed in Texas on or after January 1, 1999, the supervising orthotist(s) or prosthetist/orthotist(s) must have been licensed in accordance with this title.

§821.19. Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant.

(a) Purpose. The purpose of this section is to establish the scope of practice and the qualifications for licensure for a licensed assistant.

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist may supervise and direct the licensed orthotist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant. An orthotist assistant may conduct critical care events only under the direct supervision of the supervising licensed orthotist or supervising licensed prosthetist/orthotist, or another licensed orthotist or licensed prosthetist/orthotist who has temporarily assumed responsibility for the acts or omissions of the licensed orthotist assistant in a particular matter.

(2) A licensed prosthetist assistant provides ancillary patient care services under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist may supervise and direct the licensed prosthetist assistant as the supervisor determines. However, the responsibility of the supervisor always

specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant. A prosthetist assistant may conduct critical care events only under the direct supervision of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist, or another licensed prosthetist or licensed prosthetist/orthotist who has assumed responsibility for the acts or omissions of the licensed prosthetist assistant or licensed prosthetist/orthotist assistant may only provide ancillary patient care services in the discipline in which the assistant's supervisor is licensed under the Orthotics and Prosthetics Act.

(3) A licensed prosthetist/orthotist assistant performs the type of work described in both paragraphs (1) and (2) of this subsection and is subject to the supervision requirements described there.

(c) Qualifications for licensure as an assistant. The following education and experience are required if applying for an assistant license after the 181st day after the date the board's initial rules are finally adopted and published. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) at least an associate degree from a college or university accredited by a regional accrediting organization such as the Southern Association of Schools and Colleges that included at a minimum:

- (A) six credit hours of anatomy and physiology;
- (B) three credit hours of trigonometry or higher mathematics;
- (C) three credit hours of physics or chemistry; and

(2) a clinical residency for assistants of not less than 500 hours, completed in a period of not more than six consecutive months, in a prosthetic and orthotic facility that meets §821.29 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities) under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. A licensed assistant may supervise a clinical resident, provided a licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist assumes responsibility for the acts of the licensed assistant and the clinical resident. The supervisor's license must be in the same discipline being completed by the clinical resident.

(A) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic and orthotic facility or its patients or clients.

(B) The clinical residency shall include observation of assistant level work covering assisting with patient assessments, measurement, design, fabrication, assembling, fitting adjusting or servicing prostheses or orthoses or both, depending on the type of residency.

(C) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist.

(D) The clinical resident shall not independently provide ancillary patient care services of the type performed by a licensed assistant and may not independently engage in prosthetic and orthotic care directly to the patient.

(E) The clinical resident may only be incidentally involved in other duties including, but not limited to, scheduling, medical records, clerical, payroll and accounting, janitorial/housekeeping, transportation, or delivery.

(d) Qualifications for licensure as an assistant under time-limited conditions. If applying on or before the 181st day after the date the board's initial rules are finally adopted and published, the applicant must:

(1) be a Texas resident as defined in §821.2 of this title (relating to Definitions) at the time of application, and

(2) submit evidence satisfactory to the board of having practiced within the scope of a prosthetist assistant, prosthetist/orthotist assistant or orthotist assistant, as set out in subsection (b) of this section, in Texas for at least three consecutive years. The applicant must provide documentation of practicing within the scope of practice of an assistant in Texas for at least three consecutive years. Evidence may include, but is not limited to, W-2 forms, and affidavits from supervisors, employers, physicians, other health care professionals and patients familiar with the applicant's practice as an assistant.

§821.21. Technician Registration.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a registration as a prosthetist or an orthotist technician issued under the Orthotics and Prosthetics Act (Act) §25.

(b) Supervision requirements. A technician must be supervised by a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant licensed by the board. The supervisor should consider the strengths and weaknesses of the individual technicians.

(c) General requirements for the technician registration. To qualify for a registration as a technician, an applicant must submit:

(1) proof of a current supervisory relationship or tentative supervisory relationship, as described in subsection (b) of this section;

(2) a photocopy notarized as a true and exact copy of an unaltered:

(A) official diploma or official transcript indicating graduation from high school;

(B) certificate of high school equivalency issued by the Texas Education Agency or the appropriate educational agency in another state, territory, or country; or

(C) official transcripts from a regionally accredited college or university, showing that the applicant earned at least three semester hours of credit; and

(3) documentation, acceptable to the board, showing that the applicant has not less than one thousand hours of laboratory experience as:

(A) a prosthetic technician. The experience claimed must meet the definition of the "registered prosthetic technician" as described in §821.2 of this title (relating to Definitions);

(B) an orthotic technician. The experience claimed must meet the definition of the "registered orthotic technician" as described in §821.2 of this title;

(C) a prosthetic/orthotic technician. The experience claimed must meet the definition of the "registered prosthetic/orthotic technician" as described in §821.2 of this title.

(d) Special requirements requiring application on or before the 181st day after the board adopts rules. The board shall grant a registration to an applicant who meets the following qualifications.

(1) The applicant must apply for a technician registration on or before the 181st day after rules are adopted.

(2) The applicant must reside in Texas and intend to remain in Texas at time of application for a technician registration.

(3) The applicant must provide evidence, satisfactory to the board, that the person practiced as a technician as defined in §821.2 of this title in Texas for three consecutive years preceding the date of application.

§821.23. Temporary License.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a temporary license as a prosthetist, orthotist, or prosthetist/orthotist issued under the Orthotics and Prosthetics Act (Act) §29.

(b) General requirements. To qualify for a temporary license, an applicant must:

(1) have become a Texas resident as defined in §821.2 of this title (relating to Definitions), within the 12 month period preceding application for a temporary license;

(2) intend to remain in Texas;

(3) be actively engaged in completing the education requirements in subsections (c), (d), or (e) in §821.17 of this title (relating to Licensing by Examination), and clinical residency requirements in subsections (f), (g), or (h) in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency); and

(4) have either:

(A) practiced orthotics regularly since January 1, 1996; or

(B) been licensed as a prosthetist, orthotist, or prosthetist/orthotist by the state governmental licensing agency in the state in which the applicant resided immediately preceding the applicant's move to Texas. The licensing requirements in that state must be equal to or exceed the requirements of this title.

(c) Examination required. To continue practicing prosthetics or orthotics the temporary license holder must pass the appropriate board examination as set out in §821.9 of this title. The examination must be passed while the temporary license is current and not expired.

(d) Issuance of a temporary license. A temporary license is valid for one year from the date issued.

(e) Renewal requirements. A temporary license may be renewed once for one additional one year period if the applicant:

(1) applies for renewal on or before the expiration date of the initial temporary license; and either

(2) took or is scheduled to take an examination under §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) during the year immediately preceding the date of the application for temporary license renewal; or

(3) presents evidence, satisfactory to the executive director of good cause for renewal. The executive director may consult with a board member in order to determine if sufficient evidence has been presented.

(f) Supervision of a temporary licensee. The board does not require supervision. However, the individual's strengths and weaknesses should be considered by those employing or directing a temporary licensee.

§821.25. Provisional License.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a provisional license as a prosthetist or orthotist issued under the Orthotics and Prosthetics Act (Act) §28. This section and the provisional licenses issued under this section expire January 1, 2005.

(b) General requirements. To qualify for a provisional license an applicant must:

(1) be practicing comprehensive prosthetic or orthotic care, and not be in violation of the Act or these rules;

(2) not meet the requirements for licensing as a prosthetist or orthotist by October 1, 1998, as described in §821.13 of this title (relating to License by Examination under Special Conditions Requiring Application by the 181st Day After Rules Are Adopted), or §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist);

(3) not be exempt under §21 of the Act;

(4) be actively engaged in completing the education requirements in subsections (c), (d), or (e) in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist), and clinical residency requirements in subsections (f), (g), or (h) in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency);

(5) have completed an associate degree from a college or university accredited by a regional accrediting organization such as the Southern Association of Schools and Colleges that included at a minimum:

(A) six semester hours of anatomy and physiology;

(B) six semester hours of chemistry or physics; and

(C) three semester hours of trigonometry or higher mathematics;

(6) have at least forty five hundred hours of post graduate clinical experience in either:

(A) prosthetics under direct supervision of a licensed prosthetist; or

(B) orthotics under the direct supervision of a licensed orthotist.

(c) Issuance of a provisional license. A provisional license is valid for two years from the date issued or January 1, 2005, whichever occurs first.

(d) Renewal of a provisional license. A provisional license may be renewed for an additional two year period. However, in no case will a renewal extend beyond January 1, 2005.

(e) Renewal requirements.

(1) A provisional license may be renewed on or before the expiration date.

(2) A provisional license may be renewed if the provisional licensee took an examination under §821.9 of this title during the year immediately preceding the date of the application for license renewal.

(3) The procedures described in §821.33(c)(4)-(6) and (d)-(g) of this title (relating to License Renewal) shall apply to the renewal of a provisional license.

(f) Supervision of a provisional licensee. The board does not require supervision. However, the individual's strengths and weaknesses should be considered by those employing or directing a provisional licensee.

(g) Examination required. To continue practicing prosthetics or orthotics on or after January 1, 2005, the provisional license holder must pass the appropriate board examination as set out in §821.9 of this title. The examination must be passed on or before January 1, 2005, while the provisional license is current and not expired.

(h) Expiration of provisional license section. This section expires January 1, 2005.

§821.27. Student Registration.

(a) Purpose. The purpose of student registration is to provide the person practicing the prosthetic and/or orthotic profession with legal authorization while fulfilling the postgraduate requirements for licensure by examination.

(b) Eligibility. The board shall issue or renew a student registration certificate to a person who:

(1) has applied for student registration on forms prescribed by the board;

(2) has paid the student registration fee as described in §821.5 of this title (relating to Fees);

(3) has completed the academic requirements for a license as an orthotist, prosthetist, or prosthetist/orthotist, as described in §821.17 (relating to Licensing by Examination); and

(4) is actively engaged in either:

(A) completing a clinical prosthetic, orthotic, or prosthetic/orthotic residency, as described in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency); or

(B) applying for or awaiting the results of the appropriate examination, as set out in §821.17 of this title and has completed the clinical residency.

(c) The board shall refuse to issue or renew a student registration if the person is not actively engaged in completing the professional clinical residency or the examination.

(d) Issuance.

(1) An applicant may be issued one initial student registration in each area: orthotics, prosthetics or both, depending on the type of clinical residency. The applicant shall note on the application form if the residency is in orthotics, prosthetics, or both.

(2) A student registration certificate expires two years from the date issued, unless issued under subsection (f) of this section.

(3) An applicant may not reapply for a subsequent initial student registration in the same area(s).

(e) Renewal. A student registration may be renewed once for an additional two years, unless issued under subsection (f) of this section. A student registration may not be renewed more than once in each area: orthotics, prosthetics, or both. The continuing education requirements as set out in §821.35 of this title (relating to Continuing Education) do not apply to renewal of a student registration.

(f) Special provisions expiring January 1, 2005.

(1) A student registration issued to a person who holds an associate degree including course work in the anatomical, biological, and physical sciences, shall expire two years from the date issued or on January 1, 2005, whichever occurs first.

(2) A student registration shall not be issued or renewed after December 31, 2004, if the person does not hold a bachelor's degree in prosthetics and/or orthotics or a bachelor's degree and a prosthetic or orthotic certificate.

(g) Application before residency. The applicant shall apply for a student registration before beginning the clinical residency, but not more than thirty days before the beginning date of the clinical residency. An applicant who is actively engaged in completing a clinical residency that began before October 1, 1998, shall apply for a student registration within thirty days of the date the board adopts rules or by December 31, 1998, whichever comes first. A person who is actively engaged in a clinical residency who does not apply for a student registration may not receive credit for the hours completed before application toward qualifying for a license by examination. The applicant shall provide on the application form the:

(1) name and address of the facility(ies) where the applicant will accomplish the clinical residency;

(2) name(s) and license number(s) of the practitioner(s) who will provide direct and indirect supervision to the applicant; and

(3) beginning date and the anticipated ending date of the clinical residency.

(h) Reporting of changes. The applicant shall inform the board within thirty days of changes in the information provided on the application form.

(i) Compliance with board rules. The student registrant shall comply with the rules of the board, especially §821.31 of this title.

§821.29. Accreditation of Prosthetic and Orthotic Facilities.

(a) Requirement for practice setting of licensees.

(1) A person licensed under this Act who practices in Texas shall practice only in facilities accredited under the Act, unless the type of practice is exempted by the Act §21, or the facility is exempted by the Act §26(e).

(2) A facility shall not be required to achieve accreditation under this section if the facility or person(s) providing health care services at the facility do not perform or hold itself or themselves out as performing or offering to perform prosthetics or orthotics as defined in the Act §2, or §821.2 of this title (relating to Definitions).

(b) Purpose of facility accreditation. The purpose of accreditation is to identify for prospective patients, referral sources, and third-party payers which prosthetic and orthotic facilities meet the board's requirements.

(c) Accreditation application.

(1) Accreditation applications must include the following information:

(A) name of the facility;

(B) street address of the facility (must be in Texas);

(C) mailing address, if different from the street address;

(D) if a corporation:

(i) the name, address, social security number and percentage of ownership of persons who directly or indirectly own or

control 5.0% or more of the outstanding shares of stock in the facility in a privately held corporation; or

(ii) the name and address of the director(s); or

(E) the name, address, telephone number, and social security number of the sole proprietor or partners;

(F) if another type of organization, the type of organization, the name, address, and telephone number of the owner(s);

(G) the total square feet of the facility;

(H) the name and Texas license number of the prosthetist, orthotist, or prosthetist/orthotist in charge and his or her notarized signature;

(I) the name and Texas license number of other licensees of this Act who practice in the facility; and

(J) the signature of the person who submits the accreditation application that has been notarized.

(2) The board will not consider an application as officially submitted until the applicant pays the accreditation fee as set out in §821.5 of this title (relating to Fees). The fee must accompany the application form.

(3) If an individual, partnership, corporation or other entity owns one or more facilities, the board requires one primary application and separate addendum pages for additional sites to be accredited.

(4) The executive director, acting for the board, shall determine whether the facility complies with the Act and these rules of the rules.

(5) If the board does not grant accreditation to the entity that applies to be an accredited facility, the accreditation fee will not be returned.

(6) The executive director shall give the applicant written notice of the reason(s) for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the board's formal hearing procedures in §821.39 of this title (relating to Complaints). Procedures relating to the notice and request for hearing shall be governed by the same section.

(d) Denial of accreditation. An application may be denied for one or more of the following reasons:

(1) nonpayment of an accreditation fee;

(2) failure to submit the required information on the application form;

(3) falsification of information on the application form;
or

(4) violation of the Act or rules.

(e) Requirements for accredited facilities.

(1) The entire facility building and property must meet applicable federal, state, and local laws, codes, and other applicable requirements.

(2) Prosthetic and orthotic facilities must apply for accreditation with the board and pay an accreditation fee by February 1, 1999, or within 60 days of the first patient treatment date, whichever is later.

(3) An accredited facility must display the accreditation certificate in a prominent location in the facility where it is available for inspection by the public. An accreditation certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(4) An accredited facility is subject to random inspection to verify compliance with the Act and these rules at anytime by authorized personnel of the board. The board may also conduct inspections if a complaint is received regarding the facility.

(5) An accredited facility must be under the clinical on-site direction of a prosthetist, orthotist, or prosthetist/orthotist licensed by the board in the discipline in which the facility sought accreditation. The person shall supervise the provision of prosthetics or orthotics in accordance with the Act and rules and shall be considered the person in charge.

(6) A facility accredited under the Act is required to comply with the Act and rules of the board at all times.

(7) A facility accredited under the Act shall always prominently display a sign in letters at least one inch in height, containing the name, mailing address, and telephone number of the board, a statement informing consumers that complaints against licensees of the facility may be directed to the board, and the toll-free telephone number for presenting complaints to the board about a person or facility regulated or requiring regulation under the Act.

(8) An accredited facility is required to report to the board change regarding the on-site prosthetist, orthotist, or prosthetist/orthotist who is clinically directing the facility within 30 days after it occurs.

(9) An accredited facility may advertise as a "Prosthetic or Orthotic Facility Accredited by the Texas Board of Orthotics and Prosthetics." A facility which is exempt or which the board does not accredit may not advertise or hold itself out as a facility accredited by the Texas Board of Orthotics and Prosthetics.

(10) An accreditation issued under these rules shall not be transferred or sold to another facility or owner. An accreditation issued under these rules may not be transferred to a different location without written approval of the executive director.

(f) Change in ownership.

(1) The new owner of a prosthetic and orthotic facility must apply for accreditation as a new applicant within 90 days of the change in ownership.

(2) The former owner of the facility must return the accreditation certificate to the board within 30 days of the sale or transfer of the facility to a new owner.

(g) Exemptions to accreditation. A facility licensed under the Health and Safety Code, Chapter 241 (relating to Hospitals), is exempt from this accreditation. This includes hospitals, convalescent and nursing homes, ambulatory surgical centers, birthing centers, abortion, continuing care facilities, personal care facilities, special care facilities, maternity homes, and end-stage renal disease facilities. These types of facilities are automatically exempt and are not required to obtain a formal exemption from the board.

(h) Renewal of accreditation.

(1) When issued, an accreditation is valid for two years from the date the initial accreditation was issued.

(2) An accredited facility must renew an accreditation every two years by completing a renewal application and submitting the required fee.

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

(4) The board shall not renew the accreditation of a facility that is violating or has violated the Act or these rules.

(5) At least 30 days before the expiration of a facility's accreditation, the board will send notice to the facility of the accreditation expiration date and the amount of the renewal fee due and an accreditation renewal form. Failure to receive a renewal application from the board does not exempt the facility from renewing its accreditation. A facility that fails to receive a renewal application by the first day of its renewal month should contact the board immediately.

(6) The board shall issue an accreditation renewal to a facility who has met the requirements for renewal. It shall be affixed to or displayed with the original accreditation and is the property of the board.

(i) Failure to achieve accreditation. Facilities that fail to achieve accreditation with the board as required by Act and rule are noncompliant with the Act and rule and are subject to disciplinary actions by the board. Additionally, the licensed prosthetist, orthotist, or prosthetist/orthotist in charge of the facility may be violating the Act and rules and subject to disciplinary action.

(j) Reinstatement of accreditation. When a facility fails to renew its accreditation within the renewal month, the facility is subject to fees as follows:

(1) If the facility accreditation has been expired for 90 days or less, the facility may renew by paying the required renewal fee and a restoration fee that is one-half of the renewal fee.

(2) If the facility accreditation has been expired for more than 90 days but less than one year, the facility may renew by paying the unpaid renewal fees and a restoration fee that is equal to the renewal fee.

(3) If the facility accreditation has been expired for more than one year, the facility may renew the accreditation by paying the required renewal fee and a restoration fee that is double the renewal fee.

(k) Disciplinary actions.

(1) The executive director may propose disciplinary action against an accredited facility for violation of the Act or rules. The disciplinary action may include a reprimand, revocation or suspension of the accreditation, probation, or other appropriate disciplinary action.

(2) The processing of complaints against applicants for accredited facilities, or accredited facilities is accomplished in accordance with §821.39 of this title (relating to Complaints).

(3) A revocation or suspension of an accreditation affects all facilities accredited under one primary accreditation.

(4) The executive director shall give the facility written notice of the proposed disciplinary action and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the board's formal hearing procedures in §821.39 of this title. Procedures relating to the notice and request for hearing shall be governed by the same section.

(l) Facility cleanliness. The facility shall be constructed and maintained appropriately to provide safe and sanitary conditions for the protection of the patient and the personnel providing prosthetic and orthotic care.

(1) Patient examination and treatment rooms shall be cleaned after each patient is seen.

(2) Antibacterial hand soap, hand towels or hand dryers must be available at the sinks used by employees and patients.

(3) Exam tables must have disposable covers or disinfected surfaces.

(4) Appropriate gloves and disinfectants for disease control must be available in examination rooms and treatment areas.

(m) Patient waiting area.

(1) Patient waiting area must be separate from the other areas.

(2) Chairs with armrests must be provided in waiting room.

(3) A telephone must be made available for patient use.

(n) Examination/treatment rooms.

(1) Rooms in which patients are seen must have permanent, floor-to-ceiling walls and rigid doors. Windows must assure privacy.

(2) At least one set of parallel bars and a mirror for patient ambulation trials must be provided in each facility.

(o) Safety.

(1) Safety equipment (safety glasses or goggles and dust masks) must be available to persons working in an accredited facility.

(2) Proper machine use and training must be provided.

(3) Safety guards on machines must be in place.

(4) Lab/Fabrication area must be separated from other areas by walls and doors and have adequate ventilation and lighting.

(5) If smoking is permitted, appropriate policies and procedures are required to control smoking materials.

(6) A minimum of one licensee or registrant must be assigned to each facility to act as safety manager. The safety manager is responsible for developing, carrying out, and monitoring the safety program.

(p) Business office area.

(1) Patient records must include accurate and current progress notes.

(2) Patient records must be kept private.

(3) Patient records shall not be made available to anyone outside the facility without the patient's signed consent or as required by law.

(4) Records must be kept a minimum of five years.

(q) General.

(1) Restroom and hand washing facilities must be available to the patient.

(2) Facility must have equipment to provide casting, measuring, fitting, repairs, and adjustments.

§821.31. Standards, Guidelines and Procedures for a Professional Clinical Residency.

(a) General. The board will accept a professional clinical residency having standards that are equivalent to or exceed the standards set forth in these rules.

(b) Length of clinical residency. The residency shall consist of at least 1900 hours, including a research project.

(c) Supervision of clinical resident. A clinical resident must be directly involved in providing patient care, under the supervision of a Texas licensed practitioner whose license is in the same discipline in which residency is being completed.

(d) Written description of program. A professional clinical residency must provide the residents with a written description of the educational program, including the scope and duration of assignments to other facilities. The following must be addressed in the written description:

- (1) the term of residency;
- (2) written job description;
- (3) pertinent policies and procedures;
- (4) safety requirements;
- (5) patient confidentiality;
- (6) liability and malpractice insurance;
- (7) expectations;
- (8) limitations and restrictions of residency; and
- (9) the name of the Texas licensed practitioner who is designated as the program director.

(e) Facility requirements. A facility must:

(1) be accredited by the board or be exempt as described in §821.29 (relating to Accreditation of Prosthetic and Orthotic Facilities);

(2) record and perform quarterly evaluations regarding each resident's performance using board approved forms;

(3) have an agreement with each resident ensuring liability and malpractice coverage;

(4) have the resources and adequate facilities for residents to fulfill their education and patient care responsibilities; and

(5) have resources and adequate facilities for residents to develop proficiency in laboratory skills in prosthetic and orthotic fabrication.

(f) Staff responsibilities.

(1) Prosthetic and orthotic supervising licensee-to-resident ratio shall not exceed one Texas licensed practitioner to two residents.

(2) Staff shall maintain documentation of residents' agreements.

(3) Staff shall supervise residents during patient care. Direct supervision of critical care events is required. Indirect supervision of clinical procedures, except critical care events, is allowed throughout the residency. The supervision must be provided by a practitioner licensed in Texas in the discipline being taught. Overall assurance of quality patient care is the ultimate responsibility and liability of the supervising practitioner.

(4) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be evaluated quarterly. This determination is the program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the director and staff, each program:

(A) evaluates the knowledge, skills and professional growth of its residents, at least quarterly;

(B) provides to residents a written assessment of their performance quarterly;

(C) maintains written evaluations on forms prescribed by the board, as part of the performance record for each resident. The performance record of each resident shall be available to that resident; and

(D) provides documentation to the resident, at least quarterly, and to the board upon request, regarding the number of hours of residency completed by the resident.

(g) Resident responsibilities and qualifications.

(1) The resident shall be responsible for participating in safe, effective and compassionate patient care under supervision commensurate with his or her level of advancement and responsibility.

(2) The resident must meet the qualifications for licensure by examination as described in §821.17 of this title (relating to Licensing by Examination) except for having completed the 1900 hours professional clinical residency.

(h) Residency objectives.

(1) Clinical assessment. Upon completion of a residency, a person must be proficient in clinical assessment skills for prosthetic and/or orthotic patients as displayed by the ability to:

(A) obtain a history of the patient by interviewing the patient and others and reviewing available records to determine the need for a specific device;

(B) observe gait, coordination, present device if available and other physical characteristics to supplement patient history and physical examination;

(C) examine the patient to determine skin condition, joint range of motion and muscle strength;

(D) assess the specific needs of individual patients by integrating the information obtained from history, examination and observation;

(E) discuss with the patient his or her perceived needs and expectations;

(F) provide information to the patient, family and involved health professionals regarding a device's potential advantages and disadvantages to assure understanding of the treatment plan and cooperation of the individuals involved;

(G) develop a treatment protocol for the specific patient by review of data obtained to determine a specific device recommendation and plan for its use; and

(H) obtain and accurately record appropriate measurements and other data from the patient to design the recommended device.

(2) Patient management. Upon completion of a residency, a person must be proficient in patient management skills for prosthetic and/or orthotic patients as displayed by the ability to:

(A) measure a patient by using proper instruments and tests. Compile data to be used in device design and fabrication;

(B) manipulate the patient's limbs to provide correction, position or deformation to obtain the most appropriate information;

(C) replicate the patient's body or limbs to obtain an accurate anatomical impression to be used in fabricating a prosthetic and orthotic device;

(D) achieve optimum comfort, function and cosmesis by using proper fitting techniques;

(E) visually evaluate if a patient's gait has achieved optimum prosthetic and orthotic function;

(F) achieve optimum alignment and function of a patient's prosthetic/orthotic device by evaluating the sagittal, transverse and coronal planes;

(G) maintain proper documentation of the patient's treatment history through established records keeping techniques; and

(H) provide ongoing patient care to assure continued proper fit and function of the prosthetic or orthotic device.

§821.33. License Renewal.

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

(b) Application. This section applies to licensees and registrants of the board. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations.

(c) General. Paragraphs (1) and (2) of this subsection do not apply to renewal of a provisional or temporary license or a student registration.

(1) When issued, a license is valid until the licensee's next birth month, unless the issue date would occur within six months of the licensee's birth month. In those cases the license shall be issued for the one to six-month period plus the next full year. After the initial license period, a licensee must renew the license biennially (every other year).

(2) The renewal date of a license shall be the last day of the licensee's birth month.

(3) Licensees are responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the executive director before the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(4) The board shall not renew the license of the licensee who is violating the Act or board rules at the time of application for renewal. The renewal of a license shall not be granted to a licensee for whom a contested case is pending, but shall be governed by the Government Code §2001.054.

(5) The board shall not renew a license or registration if Education Code, §57.91 (relating to Loan Default Ground for Non-renewal of Professional or Occupational License) prohibits renewal.

(6) The board shall deny renewal of the license or registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, §232.002 (relating to Suspension of License for Failure to Pay Child Support or Comply with Subpoena).

(d) License renewal requirements.

(1) At least 45 days before the expiration date of a person's license, the executive director shall send notice to the licensee at the address in the board's records, of the expiration date of the license, the amount of the renewal fee due and a license renewal form that the licensee must complete and return to the board with the required renewal fee. The return of the completed renewal form following the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The supervising licensed prosthetist or orthotist shall sign the license renewal form for the licensed assistant and show on the form whether the supervisor and supervisee have complied with these rules.

(3) A licensee has renewed the license when the licensee has mailed the renewal form, the required renewal fee, and the statement of continuing education, if required, to the executive director before the expiration date of the license. The postmark date shall be considered as the date of mailing. The current license will be considered active until the renewal is issued or finally denied.

(4) A licensee must comply with applicable continuing education requirements to renew a license including the audit process described in §821.35 of this title (relating to Continuing Education). Continuing education shall not be required if the applicant is renewing a temporary or provisional license or a student registration.

(5) The board shall issue a license certificate to a licensee who has met the renewal requirements.

(e) Late renewal requirements.

(1) The executive director shall inform a person who has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for late renewal and the date the license expired.

(2) A person whose license has expired for not more than one year may renew the license by submitting the license renewal form and appropriate late renewal fee to the executive director. The renewal is effective if mailed to the executive director on or before the first anniversary of the license expiration date. The postmark date shall be considered as the date of mailing.

(3) A person whose license has been expired more than one year may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license.

(f) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he has the title of "licensed orthotist," "licensed prosthetist," "licensed prosthetist/orthotist" or "licensed orthotist assistant" or "licensed prosthetist assistant" or use the letters "LO," "LP," "LPO," "LOA," "LPA," or "LPOA", and may not use facsimiles of those titles.

(2) A person who fails to renew a license after one year is required to surrender the license certificate and identification card to the board.

(g) Active duty. If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America serving outside the

State of Texas on the license expiration date, the licensee may renew the license in accordance with this subsection.

(1) The licensee, the licensee's spouse, or an individual having power of attorney from the licensee may request renewal of the license. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee was on active duty serving outside the State of Texas on the license expiration date shall be filed with the board along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the board along with the renewal form if the individual having the power of attorney executes documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee, but not the reinstatement fee or a penalty fee.

(6) A licensee renewing under this subsection shall be required to submit the same amount of continuing education hours as required for regular renewal unless the licensee shows to the satisfaction of the board that a hardship existed which prevented the licensee from obtaining the continuing education hours. Hardships may include medical reasons, combat duty, or assignment to a location where continuing education activities were not available.

§821.35. Continuing Education.

(a) Purpose. The purpose of this section is to establish the continuing education requirements a licensee shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensees and registrants. Continuing education credit includes programs beyond the basic preparation. These programs are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the profession, thus improving prosthetic and orthotic care provided to the public.

(b) Application. This section applies to licensees and registrants of the board. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations. This section does not apply to a provisional or temporary license, or a student registration.

(c) Effective date. The first continuing education period shall begin after the licensee has renewed his or her license for the first time. Continuing education will not be required during the initial license period. After that, a licensee is required to attend continuing education activities as a condition of renewal of a license.

(d) Continuing education periods.

(1) The continuing education period shall begin the first day of the month following the month in which the licensee's birthday occurs.

(2) Continuing education periods shall be two years in length. The period coincides with the license renewal period.

(e) Determination of continuing education credits.

(1) For seminars, lectures, presentations, symposia, workshops, conferences and similar activities, 50 minutes shall be considered as one credit.

(2) Course work completed at or through an accredited college or university shall be credited based on eight credits for each semester hour completed for credit. Continuing education credit will be granted for a grade of C or better for the continuing education period in which the course is completed.

(f) Requirements. Licensees shall attend and complete continuing education each renewal period unless the licensee is exempted under subsection (m) of this section.

(1) Licensees shall be responsible for obtaining continuing education credit that meets the requirements of this section, based on subsection (i) of this section.

(2) Licensees shall be responsible for maintaining proof of completion of his or her own continuing education credits.

(3) Attendance and completion of the following number of continuing education credits are required:

(A) prosthetist or orthotist license - 24;

(B) prosthetist and orthotist license - 40;

(C) prosthetist or orthotist assistant - 12;

(D) prosthetist and orthotist assistant - 20;

(E) prosthetic or orthotic technician - 6; and

(F) prosthetic and orthotic technician - 10.

(g) Acceptable activities. Of the total hours required, at least 75% must be live, instructor-directed activities. Twenty-five% or less may be self-directed study.

(h) Acceptable topics. Of the total hours required, 80% must be directly related to prosthetics or orthotics depending on the type of license held, and 20% or less may be related to other topics. If the license is in prosthetics and orthotics, a combination of prosthetics or orthotics topics is allowed.

(i) Acceptable types of continuing education.

(1) Credits must be offered or approved by a state, regional or national orthotics, prosthetics, or allied health organization or offered by a regional accredited college or university.

(2) Continuing education undertaken by a licensee shall be acceptable if the licensee attends and participates in an activity which falls in one or more of the following categories:

(A) academic courses;

(B) clinical courses;

(C) in service educational programs, training programs, institutes, seminars, workshops, and conferences; or

(D) self-study modules, with or without audio cassettes, and video cassettes of presentations, provided:

(i) a post-test is required; and

(ii) provided the number of hours completed do not exceed 25% of the credits required;

(E) distance learning activities, audiovisual teleconferences, and interactive computer generated learning activities provided appropriate on-site supervision of participants is provided;

(F) instructing or presenting in activities listed in subparagraphs (A)-(C) of this paragraph. Multiple presentations of the same program or equivalent programs may only be counted once during a continuing education period; and

(G) writing a book or article applicable to the practice of prosthetics and orthotics. Four credits for an article and eight credits for a book will be granted for a publication in the continuing education period in which the book or article was published. Multiple publications of the same article or an equivalent article may only be counted once during a continuing education period. Publications may account for 25% or less of the required credit.

(j) Reporting of continuing education credit.

(1) At the time of license renewal, licensees shall file a continuing education report on a form provided by the board.

(2) A representative sample of the licensees renewing during each month shall be selected at random for auditing continuing education credits. The following procedures shall apply to the audit.

(A) At the time the renewal notice is sent to the licensee, the board shall notify the licensees selected for an audit.

(B) If selected for an audit, the licensee shall submit certificates, transcripts or other documentation satisfactory to the board, verifying the licensee's attendance, participation and completion of the continuing education credits claimed on the report form.

(C) The documentation shall be furnished at the time the renewal form is returned to the board.

(3) Failure to timely furnish the required information, or knowingly providing false information during the renewal or audit process shall be grounds for disciplinary action against the licensee.

(k) Failure to complete the required continuing education at renewal time.

(1) The board shall notify a licensee applying for renewal who failed to complete the requirements for continuing education that if the licensee does not obtain the credits before the expiration of three months after the date the notice was given, the board may take action to suspend or revoke the license. Notice shall be given by first-class mail to the last address on file with the board. The date the notice was given shall be five calendar days after the date of the board's notice to the licensee.

(2) The licensee shall be responsible for completing and reporting to the board the additional continuing education credits required within the three-month period after notice was given.

(3) Credits earned during the additional three months shall only be applied to that continuing education period. Credit may not be carried over to the next period.

(l) Failure to complete the continuing education credits after three months.

(1) The board shall notify the licensee that the board intends to suspend or revoke the license for failure to complete and report the required continuing education. The licensee shall be offered the opportunity to show compliance with the continuing education requirements.

(2) The licensee may request a formal hearing on the proposed suspension or revocation. The times and procedures for the showing of compliance and the formal hearing shall be those set out in §821.39 of this title (relating to Complaints). Failure to timely request a hearing will result in the waiver of the opportunity for a formal hearing.

(m) Qualifying exemptions from the continuing education requirements.

(1) The following licensees are exempt from the requirements of this section if the qualifying event occurred during the 24 months immediate preceding the license expiration date. The licensee is responsible for submitting an affidavit stating the licensee meets the criteria for the exemption accompanied by proof satisfactory to the board:

(A) a licensee who served in the regular armed forces of the United States of America;

(B) a licensee who suffered a mental or physical illness or disability that prevented the licensee from complying with the requirements of this section; or

(C) a licensee who suffered a catastrophic event such as a flood, fire, tornado, hurricane that prevented the licensee from complying with the requirements of this section;

(2) Licensees employed as faculty in Commission on Accreditation of Allied Health Education Programs (CAAHEP) accredited programs or programs having educational standards equal to or greater than CAAHEP in prosthetics and orthotics shall be exempt from 50% of the continuing education requirements described in subsection (f) of this section.

(3) Failure to submit documentation satisfactory to the board as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of this section.

(n) Untrue documentation. Untrue documentation or information submitted to the board shall subject the licensee to disciplinary action as set out in §821.39 of this title.

(o) Unacceptable activities. Activities unacceptable as continuing education for which the board may not grant continuing education credit are:

(1) education incidental to the licensee's regular professional activities such as learning occurring from experience or research;

(2) professional organization activity such as serving on boards, committees or councils or as an officer;

(3) continuing education activities completed before the renewal period;

(4) activities described in subsections (h) and (i) of this section completed more than once during the continuing education period;

(5) activities in which the licensee did not attend, participate, or complete;

(6) performance of duties that are routine job duties or requirements;

(7) self-directed study activities that did not include a post test; or

(8) self-directed study activities that exceed the 25% limit as set out in subsection (g) of this section; and

(9) activities not offered or approved by a state, regional or national prosthetics and/or orthotics organization or not offered by a regional accredited college or university.

§821.37. Change of Name and Address.

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

(b) The licensee shall notify the board of a name or preferred mailing address change within 30 days of the change(s).

(c) Notification of address changes shall be made in writing and mailed to the executive director. Address changes shall include the name, mailing address, and zip codes.

(d) Before the board will issue another license certificate and identification card, notification of name changes must be mailed to the executive director. Notification shall include a duly executed affidavit and a copy of a marriage certificate, court decree evidencing the change, or a Social Security card reflecting the new name. The licensee shall return previously issued license certificates and identification cards and remit the appropriate replacement fee as set out in §821.5 of this title (relating to Fees).

§821.39. Complaints.

(a) Purpose. The purpose of this section is to set forth the procedures for processing complaints.

(b) Filing of complaints.

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

(2) A person wishing to file a complaint against a person licensed by the board or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive director's office. The mailing address is, Texas Board of Orthotics and Prosthetics, 1100 West 49th Street, Austin, Texas 78756-3183. Telephone: (512) 834-4520.

(3) Upon receipt of a complaint, the executive director shall send to the complainant an acknowledgment letter and, if additional information is needed, the department's complaint form, for the complainant to complete and return to the executive director. If the complaint is made by a visit to the executive director's office, the form may be given to the complainant then.

(4) The department shall investigate anonymous complaints if the complaint provides sufficient information to do so.

(c) Investigation of complaints.

(1) The executive director is responsible for resolving complaints.

(2) The department shall investigate a complaint as requested by the executive director, and report the findings to the executive director.

(3) If the executive director determines that the complaint does not come within the department's jurisdiction, the executive director shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency.

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

(5) The executive director may recommend that a license be revoked, suspended, or application be denied, or that the licensee be placed on probation or that other appropriate action as authorized by law be taken.

(6) If the executive director determines insufficient grounds exist to support the complaint, the executive director shall dismiss the complaint and give written notice of the dismissal to the complainant, respondent, and other interested parties.

(7) The executive director may issue letters of warning or advisory letters for minor violations of the Act or these rules.

These letters may be used as evidence at a disciplinary hearing held concerning conduct of a person committed after receipt of the letter.

(d) Board assistance in processing complaints.

(1) The presiding officer may appoint one board member who is a licensed orthotist and one board member who is a licensed prosthetist to help the executive director in processing complaints. The board may overrule an appointment only upon the vote of four board members to do so.

(2) The presiding officer may appoint one or more licensed prosthetists and orthotists who are not board members to serve as consultants to the executive director. These appointments are subject to the approval by a majority of the board. The consultants may not be paid for their services.

(3) The executive director may call upon one appointed board member and one consultant for assistance to resolve a particular complaint, as needed.

(4) Board members who participate in processing a complaint will not participate in the decision concerning a final order in that matter.

(5) An appointed board member or consultant will review the complaint and the proposed action by the executive director when revocation, suspension, or denial of licensure is proposed.

(e) Board oversight of processing complaints.

(1) The executive director will prepare and present a report reflecting the status of the complaints received to the board at each board meeting.

(2) The report will include the number of complaints received, the nature of the complaints made, action taken on the complaint, and the extent to which appointed board members or consultants have helped in processing complaints.

(3) The board will approve the executive director's report and provide guidance to help the executive director in processing complaints as appropriate.

(f) Formal disciplinary actions.

(1) The board may take the following formal disciplinary action for a violation of the Act or these rules: deny a license, registration, or facility accreditation; suspend or revoke a license, registration, or facility accreditation; probate the suspension of a license, registration, or facility accreditation; issue a reprimand to a licensee, registrant, or accredited facility, or impose a civil penalty pursuant to the Act §34.

(2) Before institution of formal disciplinary action the department shall give written notice by certified mail, return receipt requested, and regular mail, of the facts or conduct alleged to warrant the proposed action, and the licensee, registrant, or accredited facility shall be given an opportunity to show compliance with the requirements of the Act and these rules.

(3) The written notice will be sent to the last reported address on record for the licensee, registrant, or accredited facility, and state that a request for a formal hearing must be received, in writing, within 14 days of the date of the notice, or the right to a hearing shall be waived and the action shall be taken by default. Notice sent to the last reported address is deemed received by the licensee, registrant, or accredited facility, and a default order may be entered upon failure to timely request a hearing whether or not the notice was received.

(g) Informal hearings.

(1) A licensee, registrant, or accredited facility may request that the executive director consider holding an informal hearing. The executive director has the discretion to grant or deny this request, and will grant the request only if it appears that an informal hearing may resolve the disciplinary matter.

(2) An assigned board member or consultant may attend the informal hearing if requested to do so by the executive director.

(3) The complainant and other interested parties with knowledge of relevant facts will be notified if an informal hearing is to be held, and may attend.

(4) The informal hearing will be conducted in the manner established by the executive director. Parties will be afforded a reasonable opportunity to present their position regarding the matter at issue.

(h) Formal hearings.

(1) A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and 25 Texas Administrative Code, Chapter 1 (relating to Texas Board of Health).

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

(i) Agreed orders.

(1) Disciplinary actions may be resolved by agreed order anytime.

(2) The executive director may negotiate the terms of an agreed order with the licensee, registrant, or accredited facility, however, the agreed order is not effective until accepted by the board.

(j) Probation. Any reasonable term or condition of probation may be included in an order.

§821.41. Professional Standards and Disciplinary Provisions.

(a) Purpose. The purpose of this section is to set forth the bases for which a license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or for which a civil penalty may be imposed.

(b) Fraud, misrepresentation, or concealment of a material fact. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed when a license is obtained by fraud, misrepresentation, or concealment of a material fact, which includes, but is not limited to, the following:

(1) committing fraud, misrepresentation, or concealment of a material fact submitted with an application or renewal for licensure, registration, or facility accreditation;

(2) committing fraud, misrepresentation, or concealment of a material fact submitted with continuing education requirements;

(3) impersonating or acting as a proxy for an examination candidate or at a continuing education activity; or

(4) committing other fraud, misrepresentation, or concealment of a material fact submitted to the board or department.

(c) Fraud or deceit concerning services provided. A license, registration, or facility accreditation may be denied, revoked,

suspended, probated, reprimanded, or a civil penalty may be imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

(1) placing or causing to be placed, false, misleading, or deceptive advertising;

(2) making or allowing false, misleading, or deceptive representations concerning the services or products provided or which have been provided;

(3) making or allowing false, misleading, or deceptive representations on an application for employment;

(4) using or allowing a person to use a license or registration for any fraudulent, misleading, or deceptive purpose;

(5) employing or associating with a person or entity, who is providing prosthetic or orthotic services, and is not licensed or accredited as required by the Act or these rules;

(6) forging, altering, or falsifying a physician's order;

(7) delivering prosthetic and orthotic services or products through means of misrepresentation, deception, or subterfuge;

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Health and Safety Code §161.091;

(9) making or filing, or causing another person to make or file, a report or record that the licensee knows to be inaccurate, incomplete, false, or illegal;

(10) practicing with an expired, suspended, or revoked license or registration, or in a nonexempt facility with an expired, suspended, or revoked accreditation;

(11) persistently or flagrantly overcharging a client or third party;

(12) persistently or flagrantly over treating a client;

(13) willful violation of a board order;

(14) taking without authorization medication, supplies, equipment, or personal items belonging to a patient; and

(15) other fraud or deceit concerning services provided.

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c) of this section. Other action which may cause the board to deny a license, registration, or facility accreditation include, but are not limited to:

(1) discriminating based on race, color, disability, sex, religion, age, or national origin in the practice of prosthetics or orthotics;

(2) having surrendered a license to the board or the licensing authority of another state, territory, or country to avoid disciplinary action or prosecution;

(3) having a license revoked or suspended, having had other disciplinary action taken against the applicant, or having had the application for a license refused, revoked, or suspended by the board or the licensing authority of another state, territory, or country;

(4) engaging in conduct that state, federal, or local law prohibits;

(5) failing to maintain acceptable standards of prosthetics or orthotics practices as set forth by the board in rules adopted pursuant to these rules;

(6) being unable to practice prosthetics or orthotics with reasonable skill, and safety to patients, due to illness or use of alcohol, drugs, narcotics, chemicals or other types of material or from mental or physical conditions;

(7) having treated or undertook to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope permitted by law of the issued license, as defined in §821.2 (relating to Definitions);

(8) intentionally or negligently failing to supervise and maintain supervision of support personnel, licensed or unlicensed, in compliance with the Act and these rules;

(9) providing prosthetic and orthotic services or products in a way that the person knows, or with the exercise of reasonable diligence should know violates the Act or these rules;

(10) failing to assess and evaluate a patient's status;

(11) providing or attempting to provide services in which the licensee is untrained by education or experience;

(12) delegating functions or responsibilities to an individual lacking the ability, knowledge, or license/registration to perform the function or responsibility;

(13) revealing confidential information concerning a patient or client except where required or allowed by law;

(14) failing to obtain accreditation for a facility that is not exempt or failing to renew the accreditation of a facility that is not exempt;

(15) practicing in an unaccredited facility that is not exempt;

(16) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;

(17) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;

(18) engaging in sexual contact with a patient or client as the result of the patient or client relationship;

(19) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(20) submitting false documentation or information to the board relating to continuing education;

(21) failing or refusing to provide acceptable documentation of continuing education reported to the board for renewal if selected for an audit, or if specifically requested by the board;

(22) failing to cooperate with the board or the department by not furnishing required documentation or responding to a request for information or a subpoena issued by the board, its authorized representative, the department, or the department's authorized representative;

(23) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats, retaliation or harassment against anyone;

(24) fitting a prosthesis or orthosis without prescription;

(25) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician; and

(26) other unprofessional or unethical conduct.

(e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) Performing an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of the rights of others.

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products with reasonable care, skill, expedience, and faithfulness; or

(B) failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

(f) Violations. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for violations of this Act or these rules.

§821.43. Licensing Persons With Criminal Backgrounds.

(a) Purpose. The purpose of this section is to comply with the requirements of Texas Civil Statutes, Article 6252-13d (relating to Suspension, Revocation, or Denial of License to Persons with Criminal Backgrounds; Guidelines and Application of Law.) This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations.

(b) Guidelines. The board may deny an application or revoke, suspend, or place on probation an existing license or registration if an applicant, licensee, or registration holder has been convicted of a crime (felony or misdemeanor) according to the following guidelines.

(1) Licensees and registrants are required to conduct the profession of prosthetics and orthotics with honesty, trustworthiness, and integrity. Those criminal convictions that show unwillingness or inability to follow these requirements may be a basis to deny a license or begin disciplinary action against an existing license.

(2) The factors and evidence listed in Texas Civil Statutes, Article 6252-13c §4 (relating to Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses) shall be considered in determining eligibility for a license or registration.

(3) The executive director will review the criminal convictions and determine what disciplinary action should be taken, and may ask that an appointed board member or consultant help in making the decision.

(c) Applicant responsibilities. It is the responsibility of the applicant to obtain and send the board the recommendations of the prosecution, law enforcement, and correctional authorities regarding offenses. The applicant shall also furnish proof, in documentation acceptable to the board, that he or she has maintained a record of steady employment, supported his or her dependents, maintained

a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which he or she has been convicted.

§821.45. Default Orders.

(a) If a right to a hearing is waived under §821.39 of this title (relating to Complaints), the board shall consider an order taking appropriate disciplinary action against the licensee as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

§821.47. Surrender of License.

(a) Surrender by licensee.

(1) A licensee or registrant may voluntarily offer to surrender his or her license anytime for any reason, without compulsion.

(2) The license or registration may be delivered to the department by hand or certified mail.

(3) If a complaint is not pending, the executive director may accept the surrender and void the license.

(b) Formal disciplinary action.

(1) When a licensee or registrant has offered the surrender of his or her license after a complaint has been filed, the board shall consider whether to accept the surrender of the license or registration.

(2) Surrender of a license or registration without acceptance by the board does not deprive the board of jurisdiction against the licensee or registrant to prosecute an alleged violation of the Act or these rules.

(3) When the board accepts a surrender while a complaint is pending, that surrender is deemed to be the result of a formal disciplinary action and a board order shall be prepared accepting the surrender and reflecting this fact.

(c) Reinstatement. A license or registration surrendered and accepted may not be reinstated; however, a person may apply for a new license or registration in accordance with the Act and these rules.

§821.49. Suspension of License for Failure to Pay Child Support.

(a) This section carries out the provision of the Family Code, Chapter 232, (relating to Suspension of License for Failure to Pay Child Support or Comply with a Subpoena).

(b) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive director shall immediately determine if the board has issued a license to the obligor named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(c) The board shall carry out the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(d) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license under

this section and may not review, vacate, or reconsider the terms of a final order suspending a license under this section.

(e) 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 fees paid to the board.

(f) 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 the Act and these rules; however, the license will not be renewed until subsections (h) and (i) of this section are met.

(g) An individual who continues to engage in the profession of prosthetics or orthotics, or who continues to use the titles "licensed prosthetist, orthotist or prosthetist/orthotist," "provisional licensed prosthetist, orthotist or prosthetist/orthotist," or "temporary licensed prosthetist, orthotist or prosthetist/orthotist" after the issuance of a court or attorney general's order suspending the license is liable for the same civil penalties provided for engaging in the prohibited activity without a license or while a license is suspended.

(h) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(i) The individual must pay a reinstatement fee set out at §821.5 (relating to Fees) before issuance of the license under subsection (h) of this section.

§821.51. Civil Penalty.

(a) A person who violates the Act is subject to a civil penalty of \$200 for the first violation and \$500 for each subsequent violation. At the request of the board, the attorney general shall bring an action in the name of the state to collect a civil penalty under this section.

(b) Each day a violation of the Act §22 continues is a separate violation for the purpose of this section.

(c) A person, who attempts, offers, or contracts to practice the prosthetic or orthotic profession, is subject to a civil penalty for each person to whom prosthetic or orthotic services are or would be provided pursuant to the attempt, offer, or contract.

§821.53. Program Accessibility.

Board programs will be available in the English language. An individual may access the board's programs including board meetings and examinations in a language other than English if the individual provides an interpreter or translator at the individual's expense. The Office of Language Services within the department is contacted for assistance with unique foreign language requests.

§821.55. Consumer Notification.

Display of notice of licensure shall be as follows.

(1) Prosthetists/orthotists licensed to practice prosthetics/orthotics shall prominently display a notice in a waiting room or other area where it shall be visible to the patients. This notice shall be posted at all facilities where the licensee(s) practices and all board accredited facilities. This does not include facilities that the licensee visits to treat patients, such as hospitals, nursing homes or patients' homes.

(2) The notice shall be printed on a sign or surface measuring at least 8-1/2 inches by 11 inches, having a white background and black letters of at least 24 points, bold print, with at least 0.5 points between lines. Script or calligraphy prints are not allowed. The notice shall be worded according to the following specifications.

Figure: 25 TAC §821.55(2)

§821.57. Petition for the Adoption of a Rule.

(a) Purpose. The rule's purpose is to delineate the Texas Board of Orthotics and Prosthetics' procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for it. However, if the executive director determines that more information is necessary to help the board in reaching a decision, the executive director may require that the petitioner resubmit the petition and that it contain:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule showing the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be declared; and

(D) the anticipated public benefits from adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule.

(3) The board may deny a petition that does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A)-(D) of this subsection if the executive director determines that the latter information is necessary.

(4) The petition shall be mailed or delivered to the Texas Board of Orthotics and Prosthetics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183.

(5) The executive director shall submit the petition to the board for its consideration and disposition.

(c) Subsequent petitions to adopt the same or similar rule. The executive director may refuse to forward subsequent petitions for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

This 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 July 13, 1998.

TRD-9811031

Scott B. Atha

Presiding Officer

Texas Board of Orthotics and Prosthetics

Earliest possible date of adoption: August 23, 1998

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 34. State Fire Marshall

Subchapter H. Storage and Sale of Fireworks

28 TAC §§34.801, 34.807-34.809, 34.811 - 34.815, 34.817 - 34.818, 34.822 - 34.826, 34.828 and 34.830

The Texas Department of Insurance proposes amendments to Subchapter H, Storage and Sale of Fireworks, by amending §§34.801, 34.807 - 34.809, 34.811 - 34.815, 34.817 - 34.818, 34.822 - 34.826, 34.828 and 34.830. These proposed amendments are necessary in part to implement legislation enacted by the 75th Legislature in SB 371. SB 371, in part, transferred the operations of the state fire marshal and all of the powers, duties, rights, obligations, contracts, records, personnel, property, funds, and unspent appropriations of the Texas Commission on Fire Protection with respect to the administration of Article 5.43-4 of the Insurance Code from the Texas Commission on Fire Protection to the Texas Department of Insurance, effective September 1, 1997. Consequently, the Texas Department of Insurance now regulates fireworks. Therefore, provisions in the fireworks rules referring to the Texas Commission on Fire Protection are amended to reflect the transfer of authority from that commission to the Commissioner of Insurance. SB 371 also eliminated the fireworks importer license, added a pyrotechnic special effects license, and created two separate public display permits - single and multiple. The importer license was removed by statute, and is also removed by these amendments, because the function performed by the importer - importing of fireworks from other states to Texas - will now be performed by the licensed fireworks distributor. The multiple display permit replaces the public display license, which was also removed by SB 371 and is also removed by these amendments. Public display licensees, who formerly have been required by statute to pay late fees for late renewals, will no longer be required to pay the statutory late fees required of all fireworks licensees, but will be required to apply annually for multiple public display permits. Dividing public display permits into two categories of permits - single and multiple - is more appropriate than a single public display permit because while many public fireworks displays are performed at certain locations only once or twice per year, some businesses provide fireworks displays on many occasions throughout each year. The addition of the new license for a pyrotechnic special effects operator is appropriate because local governments sometimes require that a public fireworks display using Fireworks 1.4G be supervised by a licensed pyrotechnic technician. In these instances, a license requiring expertise in the use of Fireworks 1.4G should be issued. These amendments establish application fees for the new license and permits and also establish renewal fees for the new license. SB 371 also stated that the commissioner shall adopt by reference two NFPA standards - NFPA 1123, applicable to public fireworks displays, and NFPA 1126, applicable to pyrotechnic displays before proximate audiences. The proposed amendments to §34.826 include NFPA 1126 in new subsection (k), but do not include NFPA 1123. NFPA 1123 will be considered by the commissioner separately in an upcoming rulemaking procedure. Additionally, SB371 deleted references to class B and class C fireworks, and substituted for those classes the newer classifications, Fireworks 1.3G and Fireworks 1.4G, which are used in federal law, as well as in other jurisdictions. Although some of the rules in this subchapter previously have been amended using the newer classification system, the proposed amendments also use the newer classifications, resulting in uniform use of the newer classifications throughout the fireworks rules. Additionally, §34.801 is amended by the addition of a provision stating that the rules should be read in conjunction with Article 5.43-4 of the Insurance Code for a complete understanding of the regulation of the

fireworks industry. Section 34.807 is amended by the removal of an unnecessary provision providing for administrative actions against license and permit holders in accordance with the Administrative Procedure Act. The removal of this provision does not reflect a policy not to enforce the statute and regulations affecting the fireworks industry. Additionally, §34.808 is amended by deleting definitions of the terms that are already defined in Article 5.43-4 of the Texas Insurance Code, as well as terms that have been removed by SB 371. Additionally, §34.809(c) is amended by the addition of a sentence requiring that the original permit be posted at all retail locations for which the permit was issued. Subsection 34.809(h) is amended to require that persons engaging in the business of using or storing Fireworks 1.3G must obtain a federal license or permit if required by federal law, making it clear that the insurance department will enforce this provision. Additionally, §34.811(e) will increase from three to five the number of public displays in which a pyrotechnic operator license applicant must have assisted before being licensed. The amendment also will require a written verification of this experience by another licensed pyrotechnic operator. This requirement is intended to ensure that such operators have adequate experience before becoming licensed to conduct public displays. Section 34.812(b) is amended by clarifying the time at which public display permits expire, which will be midnight on the date on the permit. Additionally, §34.813(c) is amended to require that the name, address and telephone number of the applicant be stated on the public display permit, rather than the sponsoring organization or person. This will enable the public and any regulatory authority to determine the identity of the person or business responsible for the conduct of the display. An additional amendment to §34.813(c) allows the number of fireworks to be discharged at a public display to be estimated in the application and on the permit, because the exact number that will be discharged often cannot be precisely determined when the permit is issued. Additionally, subsection (e) is amended by the addition of a requirement that a separate permit is required for each site separated by over 1000 feet from another permitted site. This requirement also enables both the public and any regulatory authority to identify the person or businesses responsible for all public displays. This will allow each site to be separately evaluated for safety requirements. Additionally, §34.815(b) is amended to allow a limited version of the fireworks rules to be provided to a purchaser of a retail fireworks permit. This will allow the fireworks licensee to furnish only those rules applicable to retail permit holders, rather than the entire set of fireworks rules. This should reduce confusion about which provisions in the rules are of concern to these permit holders. Additionally, §34.815(c) is amended to require that both used and unused permits be returned no later than March 1 of each year. Additionally, §34.817(f) is amended by removing the prohibition against displays from air supported structures, because the meaning of this prohibition is unclear to both regulatory authorities and to the industry, and public safety is not jeopardized by the removal of this unclear provision. Subsection (f) is also amended to prohibit retail fireworks stand operators and assistants from operating a fireworks stand while under the influence of alcoholic beverages or from consuming alcohol while operating the stand. Additionally, §34.818(b) is amended to allow a power interruption in the form of one or more switches near exit doors of retail fireworks stands at a single location. This change provides greater flexibility and less expense than the current requirement of a master switch, but does not sacrifice safety. Additionally, §34.824 is amended to clarify that the tables specifying that the separation between fireworks process-

ing and storage buildings and other structures are applicable except to the extent that federal law may be less restrictive. Additionally, §34.825(a)(3) is deleted because it is an unnecessary and potentially unclear provision stating that reporting of hazardous material dents as required by federal regulations is not required by these rules. The removal of the provision does not reflect any department of insurance position relating to the reporting of such incidents under federal law. Additionally, §34.826 is amended by the addition of a new subsection (k) providing that the testing of fireworks is not considered a public display, and clarifying that no additional license or permit is required for this activity. However, such testing will be required to be conducted under the supervision of a licensed pyrotechnic operator. This amendment permits the testing of fireworks products to minimize the risk of harm to the public. Additionally, §34.828 is amended to delete obsolete provisions. New provisions are added to that section stating that the amendments to this subchapter relating to manufacturing operations and bulk storage of Fireworks 1.4G and to the storage of Fireworks 1.3G are only applicable to facilities for which construction is begun after the effective date of the amendments, and not to existing facilities. Section 34.830 is rewritten for the purpose of clarification. It provides that disciplinary actions against licensees and permittees will be based on law in effect at the time of the alleged violations.

G. Mike Davis, state fire marshal, has determined that for each year of the first five years the proposed sections are in effect, any fiscal implications to state government will be the result of the legislative enactment of the Insurance Code, Article 5.43-4, not the result of adoption and implementation of these amendments. There are no fiscal implications for local government as a result of enforcing or administering these amendments. The adoption of NFPA 1126 will not impact local governments because local governments who determine the locations of displays, or who are involved in any manner in the conduct of such displays have already implemented standards affecting these displays. There will be no effect on the local economy or local employment.

Mr. Davis also has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit from enforcing and administering the amendments is improved continuity of effective and efficient regulation of fireworks. Additionally, adoption of the federal classifications for fireworks will remove inconsistencies between federal law and state regulations. The fireworks industry and the public will be better protected if the classification system is the same for both federal and state regulatory purposes. The benefits of the changes in the license and permit classifications are that the licensees and permit holders in the fireworks business will be better able to efficiently and competently provide fireworks products and services to the consumers. The elimination of the importer license will require firms formerly licensed as importers to obtain a distributor's license to import fireworks from other states into Texas. Mr. Davis anticipates that this change in the licensing structure will produce the following results based on the following assumptions: (1) The one fireworks firm currently licensed only as an importer will obtain a license as a distributor, and therefore will pay an annual licensing fee of \$1,500.00, rather than the \$200.00 fee for the importer license. (2) Each of the eleven firms currently licensed both as importers and as jobbers will obtain licenses as distributors only, and therefore each will pay an annual licensing fee of \$1,500.00 rather than the combined

fees of \$200.00 for the importer license and \$1,000.00 for the jobber license. The reason for the assumption that these firms will no longer renew their licenses as jobbers is that a licensed distributor, like a jobber, is authorized to import and purchase fireworks for resale to retailers. Therefore, these firms would no longer need licenses as jobbers. (3) Each of the nineteen firms currently licensed both as importers and as distributors will continue to renew their licenses as distributors, and therefore each will pay only the \$1,500.00 annual license fee. Mr. Davis therefore anticipates that the decrease in importer and jobber license fees paid will be slightly more than offset by the increase in distributor license fees paid, and that the resulting average annual increase in total license fees paid by the licensed fireworks industry will be \$800.00. The new license required by SB 371, and which is included in these amendments, is the pyrotechnic special effects operator. The fireworks advisory committee appointed by the commissioner of insurance estimates that approximately 100 such licenses will be issued during the first year. The initial license fee and the license renewal fee established by these amendments for this new license is \$25.00. These fees will result in \$2,500.00 of additional license fees paid annually by these licensees. These changes in the licenses and the corresponding fees are the result of the amendments in SB 371 to the licensing and permit structure in Article 5.43-4 of the Insurance Code. The fees for the licenses not created by SB 371 are not changed by these proposed amendments. The benefit of amending §34.813(e) to clarify the amount of horizontal separation permitted between firing sites is that public display permit applicants will know precisely how much separation is allowed between separate firing sites for a single display. This limit should have little if any effect on the number of required permits because the state fire marshal has previously required a separate permit for each site where multiple sites were used for a single event of fireworks display. If there is any cost effect on the industry, it should be a slight decrease in the number of public display permits required. Small and large businesses will incur the same additional costs resulting from the amendments restructuring the licenses and the public display permits. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses. For public safety reasons, it is equally important for both large and small businesses to comply with these rules, so a waiver for small businesses from these provisions will not be feasible.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to Lynda H. Nesenholtz, General Counsel & Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Mr. G. Mike Davis, State Fire Marshal, Texas Department of Insurance, Mail Code 108-FM, Austin, Texas 78714-9104. Requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The proposal is submitted pursuant to the Insurance Code, Articles 5.43-4 and 1.03A. The Insurance Code, Article 5.43-4, section 16(a), directs the commissioner to adopt rules the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (2) the conduct of public fireworks displays; and (3) the safe storage of Fireworks 1.4G and Fireworks 1.3G. Section 16(b) further directs the commissioner to: (1) deter-

mine reasonable criteria and qualifications for licenses and permits; (2) set license and permit fees within the limits provided by Article 5.43-4; (3) determine the qualifications and examination requirements for pyrotechnic operators; and (4) establish a procedure for reporting and processing complaints. Section 5 of Article 5.43-4 also provides that the commissioner, in promulgating rules, may use standards recognized by federal law or regulation, and those published by a nationally recognized standards-making organization. Article 1.03A provides that the commissioner may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute.

The following statutes are affected by the proposal: The Insurance Code, Article 5.43-4.

§34.801. *Purpose.*

The purpose of the rules set forth in these sections is to regulate the sale, distribution, and use of certain fireworks in the interest of protecting and preserving lives and property pursuant to the Insurance Code, Article 5.43-4. These rules should be read in conjunction with Insurance Code, Article 5.43-4, for a complete understanding of the regulation of this subject matter.

§34.807. *Administration.*

(a) The State Fire Marshal is charged with the duty to administer these sections, the orders of the commissioner [~~Commission~~] and the enforcement of the Insurance Code, Article 5.43-4.

(b) (No change.)

~~{(c) Violations of these sections may be the basis for administrative action against license and permit holders in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.}~~

§34.808. *Definitions.*

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

(1) Acceptor building - A building which is exposed to embers and debris emitted from a donor building.

(2) Agricultural, industrial, or wildlife control permits - Permits authorizing the holder to use Fireworks 1.3G for specified purposes in these business activities.

(3) Bare wiring - Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.

(4) Barricade - A natural or artificial barrier that will effectively screen a magazine, building, railway, or highway from the effects of an explosion in a magazine or building containing explosives. It shall be of such height that a straight line from the top of any side wall of a building, or magazine containing explosives to the eave line of any magazine, or building, or to a point 12 feet above the center of a railway or highway, will pass through such natural or artificial barrier.

(5) Barricade, artificial - An artificial mound or revetted wall of earth of a minimum thickness of one foot.

(6) Barricade, natural - Natural features of ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine or building containing explosives when the trees are bare of leaves

(7) Barricade, screen type - Any of several barriers for containing embers and debris from fires and deflagrations in process buildings that could cause fires and explosions in other buildings. Screen type barricades shall be constructed of metal roofing, inch or 1/2 inch mesh screen or equivalent material. A screen type barricade extends from the floor level of the donor building to such height that a straight line from the top of any side wall of the donor building to the eave line of the acceptor building will go through the screen at a point not less than five feet from the top of the screen. The top five feet of the screen are inclined at an angle of between 30 and 45 degrees, toward the donor building.

(8) Breakaway construction - A general term which applies to the principle of purposely providing a weak wall so that the explosive effects can be directed and minimized. The term "weak wall" as used in these sections refers to a weak wall and roof, or weak roof. The term "weak wall" is used in a relative sense as compared to the construction of the entire building. The design strength of the weak wall will vary as to the building construction, as well as to the type and quantity of explosive or pyrotechnic materials in the building. The materials used for weak wall construction are usually light gauge metal, plywood, hardboard, or equivalent lightweight material, and the material is purposely selected to minimize the danger from flying missiles. Method of attachment of the weak wall shall be such as to aid the relief of blast pressure and fireball.

(9) Bulk storage, Fireworks 1.4G - The storage of 500 or more cases of Fireworks 1.4G.

(10) Business - The manufacturing, importing, distributing, jobbing, retailing of permissible fireworks, acting as a pyrotechnic operator, the conducting of multiple public fireworks displays, using fireworks for agricultural, wildlife, or industrial purposes.

(11) Buyer - Any person or group of persons offering an agreed upon sum of money or other considerations to a sales person for fireworks.

(12) CFR - The Code of Federal Regulations, a codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. The Code is divided into 50 titles. The titles are divided into chapters, which are further subdivided into parts.

(13) Commissioner - The Commissioner of Insurance.

~~{Commission - The Texas Commission on Fire Protection}~~

~~{Common fireworks, Class C - A small fireworks device, designed primarily to produce visible and/or audible effects by combustion, that complies with the construction and chemical composition requirements of Title 16 C.F.R. Part 1507 (1984), and the labeling requirements of the United States Consumer Product Safety Commission, and that is classified as a Class C explosive by the DOT. }~~

~~{Distributor - A person or entity that sells fireworks to jobbers, retailers, or other distributors for resale to others.}~~

(14) Donor building - A process building from which embers and burning debris are emitted during a fire.

(15) DOT - The United States Department of Transportation.

~~{Fireworks - Any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation, and that is defined as "special fireworks" by Title 49 C.F.R. §173.88(d), (1983), or as "common fireworks" by Title 49~~

~~C.F.R. §173.100(r), (1983). Exceptions to this definition are found in the Insurance Code, Article 5.43-4, §4. }~~

(16) Fireworks plant - All lands, and buildings thereon, used for or in connection with the manufacture or processing of fireworks. It includes storage facilities used in connection with plant operation.

~~{Fire prevention officer - The chief of a fire department, a fire marshal, the county fire marshal, the sheriff, a constable, any other local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal. }~~

(17) Firm - A person, partnership, corporation, or association.

(18) Generator - Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(19) Highway - The paved surface, or where unpaved, the edge of a graded or maintained public street, public alley, or public road.

~~{Illegal fireworks - A fireworks device manufactured, imported, distributed, possessed, transported, offered for sale, or sold in violation of the Insurance Code, Article 5.43-4, or these sections. }~~

~~{Importer - A person who imports fireworks from a foreign country or from another state for sale to distributors or jobbers in this state. }~~

~~{Jobber - A person who purchases fireworks for resale to retailers only.}~~

(20) License - The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in the business.

(21) Licensed firm - A person, partnership, corporation, or association holding a current license.

(22) Magazine - Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

~~{Manufacturer - A person, firm, corporation, or association that engages in the making of fireworks.}~~

(23) Manufacturing - The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when such operation is otherwise lawful.

(24) Master electric switch - A manually operated device designed to interrupt the flow of electricity.

(25) Mixing building - A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(26) Nonprocess building - Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(27) Open flame - Any flame that is exposed to direct contact.

~~{Permissible fireworks } - Those Fireworks 1.4G specified in the Insurance Code Article 5.43-4, §2.~~

~~{Person - An individual or entity, including an owner, manager, officer, employee, occupant, sole proprietorship, partnership, or corporation.}~~

(28) Process building - A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.

~~{Public display - The igniting of Fireworks 1.3G for public or private amusement.}~~

(29) Multiple public ~~[Public]~~ display permit ~~[license]~~ - A permit ~~[license]~~ issued for the purpose of conducting multiple public displays at a single approved location.

(30) Public display permit - A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location and during a designated time period.

~~{Pyrotechnic operator - An individual who, by experience, training, and passing any required examination, has demonstrated the necessary skills and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G.}~~

(31) Retail fireworks site - The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale.

(32) Retail stand - A permanent or portable structure utilized exclusively for the sale of fireworks to the general public at a retail fireworks site.

~~{Retailer - A person who purchases fireworks for resale to the general public only.}~~

(33) Safety container - A container especially designed, tested, and approved for the storage of flammable liquids.

~~{Sale - The sale or offering for sale of any merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other considerations.}~~

(34) School - Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school, or institution of higher education.

(35) Selling opening - An open area including the counter, through which fireworks are viewed and sold at retail.

~~{Special fireworks, Class B - A large fireworks device designed primarily to produce visible and/or audible effects by combustion, deflagration, or detonation and that is classified a Class B explosive by DOT. }~~

~~{State fire marshal - The chief law enforcement officer of the state charged with the responsibility of fire prevention.}~~

(36) Storage facility - Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(37) Supervisor - A person 16 years or older who is responsible for the retail fireworks site during operating hours.

(38) Walk door - An opening through which retail stand attendants can freely move and which can be secured to keep the public from the interior of the stand.

§34.809. *General Requirements, Licenses and Permits.*

(a) Each firm or person engaged in the manufacture, transportation, storage, wholesale or retail sales of fireworks, public displays utilizing Fireworks 1.3G, pyrotechnic special effects operators,

and pyrotechnic operators shall have an applicable license or permit issued by the state fire marshal.

(1) Licenses by type:

(A) distributor;

(B) ~~[importer;]~~

~~{(C)}~~ jobber;

~~(C)~~ ~~[D]~~ manufacturer;

~~{(E)}~~ public display; and

~~(D)~~ ~~[F]~~ pyrotechnic operator; and

~~(E)~~ pyrotechnic special effects operator.

(2) Permits by type:

(A) retailer;

(B) single public display;

(C) agricultural;

(D) industrial; ~~and~~

(E) wildlife control; and

~~(F)~~ multiple public display.

(b) (No change.)

(c) All required licenses and permits shall be made available for inspection at the facility for which it was issued. The original permit shall be posted at all retail locations for which such permit was issued.

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

(h) A person engaging in the business using or storing Fireworks 1.3G must ~~[should]~~ obtain a federal license or permit if required by Title XI, Regulation of Explosives of the Crime Control Act (18 United States Code, Chapter 40).

(i) Licensees and permittees shall have adequate storage facilities which comply with appropriate provisions of §34.822 and §34.823 of this title (relating to Storage of Black Powder and ~~[Class B]~~ Fireworks 1.3G at Other Than Display Sites; Bulk Storage of ~~[Class C]~~ Fireworks 1.4G).

(j) (No change.)

§34.811. *Requirements, Pyrotechnic Operator License and Pyrotechnic Special Effects Operator License.*

(a) Applicants for a pyrotechnic operator license or pyrotechnic special effects operator license shall take a written examination and obtain at least a passing grade of 70%. Written examinations may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, type, frequency, and location of the examinations shall be set by the state fire marshal.

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

(d) A licensee ~~[pyrotechnic operator]~~ whose license has been expired for two years or longer and makes application for a new license must pass another examination.

(e) A pyrotechnic operator license shall not be issued to any person who fails to meet subsection (a) of this section and the following:

(1) assisted in conducting at least five ~~[three]~~ permitted or licensed public displays in the State of Texas under the direct

supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) (No change.)

(f) (No change.)

§34.812. *Expiration, License, and Permit.*

(a) (No change.)

(b) Permits expire depending on permit type.

(1) (No change.)

(2) Public display permits expire at midnight on the date stated on the permit [~~the conclusion of the single display at the time and on the date stated on the permit~~].

(3) (No change.)

§34.813. *Applications for Licenses and Permits.*

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

(c) Applications for a public display [~~license or~~] permit shall include the following information:

(1) the name, address, and telephone number of the applicant [~~person or organization sponsoring the display~~];

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

(5) the size and estimated number of fireworks to be discharged, the number of set pieces, and other items;

(6)-(7) (No change.)

(8) evidence of public liability insurance, as required by the Insurance Code, Article 5.43-4, §15 [~~or until January 2, 1989, a certificate of insurance for surplus lines coverage in compliance with the Insurance Code, Article 1.14-2, as provided under the Insurance Code, Article 5.43-4, §16(e)~~];

(9)-(10) (No change.)

(d) A completed application for a public display [~~license or~~] permit shall be received by the state fire marshal before the display is to be conducted. A facsimile or other photocopy of the application received by the state fire marshal during normal working hours prior to the date of the display and determined to be in compliance with the provisions of this section, along with the appropriate fee, shall be acceptable for purposes of this section. An applicant issued a permit under the facsimile provisions of this section shall maintain original documentation of the application for a period of one year and shall provide such original materials to the state fire marshal on request.

(e) An additional public display permit shall be required for each site separated from the permitted site by over 1000 feet measured horizontally. [~~All public displays shall be in compliance with requirements of §591.26 of this title (relating to Preparing and Conducting Public Displays).~~]

§34.814. *Fees.*

(a) Fees required by the Insurance Code, Article 5.43-4, and these sections, shall be paid by cash, money order, or check. Money orders and checks shall be made payable to the Texas Department of Insurance [~~Commission on Fire Protection~~].

(b) (No change.)

(c) Fees shall be as follows:

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

(4) pyrotechnic special effects operator license [~~importer license~~];

(A) initial fee \$25 [~~\$200~~];

(B) renewal fee (prior to expiration) \$25 [~~\$200~~];

(5) (No change.)

(6) multiple public display permit [~~license~~];

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

(7) (No change.)

(8) single [~~Class B~~] public display permit \$50; and

(9) (No change.)

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

(f) Late fees are as follows: [-]

Figure: 28 TAC §34.814(f)

§34.815. *Retail Permits.*

(a) (No change.)

(b) Retail permits may be obtained at any time of the year from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal, and shall be signed by the applicant prior to said permit becoming effective.

(1) (No change.)

(2) Bulk storage of Fireworks 1.4G by a retail permittee shall be in compliance with §34.823 of this title (relating to Bulk Storage of [~~Class C~~] Fireworks 1.4G).

(3) (No change.)

(4) A copy of the Insurance Code, Article 5.43-4, and the fireworks rules or a condensed version thereof shall be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of the Insurance Code, Article 5.43-4, and the fireworks rules shall be made available through the State Fire Marshal's office.

(c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.

(1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's office within a week from the time the last permit in each book has been issued. All used and unused permits shall be returned no later than March 1 of each year.

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

§34.817. *Retail Sales General Requirements.*

(a) (No change.)

(b) Bulk storage of Fireworks 1.4G by retailer shall comply with §34.823 of this title (relating to Bulk Storage of [~~Class E~~] Fireworks 1.4G).

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

(f) The display, offer for sale, or sales of fireworks from tents [~~air supported structures,~~] and motor vehicles is prohibited.

(g) (No change.)

(h) The consumption of alcoholic beverages in retail stands is prohibited. Stand operators or assistants shall not be under the influence of or consume alcoholic beverages while operating a stand.

(i)-(o) (No change.)

§34.818. *Fireworks Retail Site Requirements for Design, Construction, and Storage.*

- (a) (No change.)
- (b) Electrical service, equipment, and devices.
 - (1) (No change.)
 - (2) Each stand utilizing electricity shall have a point of power interruption (switch or switches) located near an exit door ~~[one master electric switch,]~~ which interrupts all electric supply to devices and equipment located inside and on the stand. ~~[The switch must be located near an exit door.]~~
 - (3)-(5) (No change.)
- (c)-(d) (No change.)
- (e) Bulk Storage. Storage of Fireworks 1.4G by a retailer in excess of 500 cases shall comply with §34.823 of this title (relating to Bulk Storage of ~~[Class C]~~ Fireworks 1.4G).
- (f) (No change.)

§34.822. *Storage of Black Powder and ~~[Class B]~~ Fireworks 1.3G at Other Than Display Sites.*

- (a)-(b) (No change.)
- (c) Construction of magazines. Magazines for storage of Fireworks 1.3G and black powder shall meet or exceed the following specifications for Type 4 magazines.
 - (1)-(2) (No change.)
 - (3) Permanent Type 4 magazines shall be constructed in accordance with those provisions for Type 4 magazines relating to foundations, ventilation, locks, hinges, hasps, and locking hardware as required by Title 27 C.F.R. Part 55, April 1, 1997 or subsequently adopted ~~[November 1, 1984]~~ edition.

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

§34.823. *Bulk Storage of ~~[Class C]~~ Fireworks 1.4G.*

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

§34.824. *Distance Tables.*

The following distance tables shall be applicable to this subchapter except to the extent that the distances are different from less restrictive federal regulations ~~[these sections].~~

Figure: 28 TAC §34.824

§34.825. *Distribution and Transportation.*

(a) With regard to Fireworks ~~[1.3G only]~~, Title 49 C.F.R. ~~[Parts 171, 172, 173, 177, and 178, November 1, 1984, edition]~~, governing the transportation of hazardous materials, is ~~is~~ adopted by reference as rules governing the safe distribution and transportation of fireworks as hazardous materials in Texas. These rules are subject to the following explanations and exceptions.

(1) (No change.)

(2) When the term "department" is used in the text of the federal regulations as being the Department of Transportation, it shall, for the purpose of such adoption, mean the Texas Department of Insurance ~~[Commission on Fire Protection]~~.

~~[(3) The reporting of hazardous material incidents as required by federal regulations has not been adopted and, therefore, is not required.]~~

(b) (No change.)

§34.826. *Preparing and Conducting Public Displays.*

(a) Storage. Public display fireworks may be stored temporarily for a period not to exceed 30 days prior to display date in a locked area, in regular 1.3G ~~[Class B]~~ shipping cartons, not accessible by the general public, and in a location approved by the local fire prevention officer.

(b) (No change.)

(c) Public display ~~[Display]~~ criteria.

(1) The area selected for the discharge of aerial shells shall be located so that the trajectory of the shells will not come within 25 feet of any overhead object.

(2) Mortars shall be separated from spectator viewing and parking areas; from health care, church, asylum, school, and penal facilities; from storage of hazardous materials; and from residential occupancies by the minimum distances specified in the following table:

Figure: 28 TAC §34.826(c)(2)

(3)-(7) (No change.)

(d)-(i) (No change.)

(j) Proximate audience display criteria. Public displays before a proximate audience shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition. Public displays conducted in accordance with this section shall include pyrotechnic devices, including 1.3G, 1.4G, and 1.4S, as defined in NFPA 1126, and individuals conducting such displays shall be regulated by the provisions of this subchapter as pyrotechnic operators.

(k) Testing. Testing of fireworks and components of fireworks intended for public displays shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure. Such testing shall be conducted under the supervision of a licensed pyrotechnic operator, and no public display permit is required.

§34.828. *Existing Facilities and Conditions.*

(a) Amendments to this subchapter (relating to Manufacturing Operations and Bulk Storage of Fireworks 1.4G) are applicable only to manufacturing or storage facilities for which construction is begun after the effective date of the amendments, and are not applicable to existing facilities.

(b) The amendment to this subchapter (relating to Storage of Black Powder and Fireworks 1.3G) is applicable only to storage facilities for which construction is begun after the effective date of the amendment, and is not applicable to existing facilities. ~~[Existing facilities and conditions outlined below which do not comply with the Insurance Code, Article 5.43-4 and these sections, shall come into compliance within the following time periods after the effective date of these sections:]~~

~~{(1) manufacturing facilities - five years;}~~

~~{(2) bulk storage facilities - three years; and }~~

~~{(3) individuals applying for a pyrotechnic operator license before September 1, 1986, may be issued a license if they otherwise qualify and have passed the required examination, but do not comply with the supervisory requirement of §591.1134.811(e)(1) of this title (relating to Requirements, Pyrotechnic Operator License).}~~

§34.830. *Savings Clause.*

Each disciplinary action by the Texas Department of Insurance taken against a person or organization licensed or permitted under Article

5.43-4, Texas Insurance Code, shall be taken in accordance with the statutory law, regulations and orders of the commissioner of insurance or state fire marshal in effect at the time of the regulated action for which the disciplinary action is taken. [Each cause of action, pending litigation, matter in process before the Texas Commission on Fire Protection or the state fire marshal, or matter hereafter arising from an event occurring prior to the time these sections become effective shall be determined in accordance with and governed by the provisions of statutes, sections, orders, or official interpretations in effect at the time of the occurrence of the subject event, including, but in particular not limited to, those matters arising in §§34.801-34.807 of this title (relating to Storage of Fireworks by Jobbers and Distributors (Class A and Class B); Storage of Class C Fireworks by Jobbers and Distributors; Storage of Fireworks by Jobbers and Dealers for the Purpose of Transportation; Granting of Permits for, and the Presentation of, Public Displays of Fireworks; Minimum Requirements for Retail Fireworks Stands; Transportation of Fireworks on Highways; and Savings Clause); and §§591.101-591.106 of this title (reserved for Purpose; Definitions; Fireworks Stand Design and Construction; Stand Location; Safety Requirements; and Supervisor Required); and this section operates to save from repeal in that circumstance the application of such law and procedure in respect of any such circumstances from the amendment, change, or repeal contemplated by these sections; notwithstanding any provision of these sections to the contrary, if any; or any provision of conflict or ambiguity].

This 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 July 13, 1998.

TRD-9811027

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: August 23, 1998

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Subchapter J. Fish Pass Proclamation

31 TAC §57.901

The Texas Parks and Wildlife Department proposes new §57.901 concerning Fish Pass Proclamation. The passage of Senate Bill 326 in the 75th Legislature delegated to the Commission, under Parks and Wildlife Code, Chapter 66, Fish, §66.204, authority to regulate the placement of obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial fish pass that is opened, reopened, dredged, excavated, constructed, or maintained by the Department as a fish pass between the Gulf of Mexico and an inland bay. Further authority to establish changes in seasons, bag limits, means, and methods for taking wildlife resources is delegated to the Parks and Wildlife Commission

under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act.

Proposed new section creates a Fish Pass Proclamation which prohibits the placement of any type of trap within the course of Cedar Bayou and prohibits the anchoring or mooring of any vessel within the pass from a point defined by Department marker or sign on the Mesquite Bay mouth to the marker or sign erected by the Department indicating the restricted activity area near the mouth of the pass where it empties into the Gulf of Mexico.

Currently no person may operate, possess, or moor a vessel or other floating device, or place any obstruction in a natural or artificial pass maintained by the Department from the mouth of the pass where it empties into the Gulf of Mexico to a marker or sign erected by the department. This proposed rule will create additional use restrictions from the marker or sign erected by the Department to a point defined near the inland bay mouth of the pass. Department outreach efforts indicate these provisions have local support by interested parties.

Historically, Texas Parks and Wildlife has maintained Cedar Bayou fish pass because of the important role it plays in maintaining the ecosystems of the local area. The pass provides for flow of estuarine waters to the Gulf and allows tidal waters to flow into the bay systems. The pass serves as a migration route for finfish and shellfish between the Gulf and bays. Many species, including blue crabs, shrimp, and red drum, at some stage in their life cycle migrate outward from the bays to the Gulf, spawn, and their young return to the estuaries inside the bays.

In addition to the biological importance of Cedar Bayou fish pass, it also provides important recreational opportunities for the local area. These rules will provide additional protection for fishery resources in the fish pass, reduce user conflict, and allow equitable access and use of this valuable Texas resource by all saltwater anglers.

Robin Riechers, staff economist, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications associated with the maintenance of signage to state government as a result of enforcing and administering the rules. There should be no fiscal impact to local governments.

Mr. Riechers has also determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of administering the new rules will be reduced user conflict and equitable access and use of this natural resource.

There will be minimal costs for small businesses and individuals required to comply with the new rules as proposed. The magnitude of these costs cannot be quantified at this time. The cost of compliance should be equal for both small and large businesses that must comply. Small businesses or individuals that currently use the area will have a reduction in opportunity in the specific area. Those who currently are anchoring or mooring vessels in the area may incur additional costs associated with movement of vessels from the specific area. Individuals who choose to use the area for extended periods of time may incur additional costs associated with the movement of vessels in and out of the area within the allotted time frame.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Adminis-

trative Procedures Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Robin Riechers, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4645 or 1-800-792-1112 extension 4645.

The new section is proposed under Parks and Wildlife Code, Chapter 66, which delegates to the Texas Parks and Wildlife Commission authority to regulate the placement of obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial fish pass that is opened, reopened, dredged, excavated, constructed, or maintained by the Department as a fish pass between the Gulf of Mexico and an inland bay

The proposed new section affects Parks and Wildlife Code, Chapter 66, §66.024.

§57.901. Prohibited Acts.

Within the area in Cedar Bayou between a Department sign erected where Mesquite Bay flows into Cedar Bayou and the Department sign erected near the point where the pass empties into the Gulf of Mexico, it is unlawful to place any type of trap, or anchor or moor a vessel, barge, or structure for a period exceeding two consecutive days.

This 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 July 10, 1998.

TRD-9810945

Bill Harvey, Ph.D

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 389-4642

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TITLE 34. PUBLIC FINANCE

Part X. Texas Public Finance Authority

Chapter 221. Distribution of Bond Proceeds

34 TAC §221.2, §221.6

The Texas Public Finance Authority (Authority) proposes amendments to §§221.2-221.5 and new §221.6, concerning the distribution of bond proceeds. The sections explain the purpose of the rules, provide relevant definitions, set forth the requirements of agencies' requests for financing, and provide procedural and substantive requirements that must be satisfied for the Authority to issue bonds. The amendments are required to update or delete obsolete provisions and conform the sections to new statutory requirements.

Kimberly K. Edwards, Executive Director, has determined that for each of the first five years the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing and administering the sections.

Ms. Edwards also has determined that for each of the first five years that the amendments are in effect the public benefit anticipated as a result of enforcing the sections will be a more

detailed statement of the Authority's bond issuance process and requirements. There is no anticipated cost to small businesses.

Comments on the proposed amendments may be submitted to Kimberly K. Edwards, Executive Director, Texas Public Finance Authority, P.O. Box 12906, 300 West 15th Street, Austin, Texas 78711, Fax Number (512)463-5501, or electronically at kedwards@tpfa.state.tx.us.

The amendments are proposed under Texas Civil Statutes, Article 601d, which authorizes the Authority to promulgate rules necessary to implement the article.

The amendments will affect Texas Civil Statutes, Article 601d.

§221.2. Definitions.

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

(1) Act—Texas Public Finance Authority Act, Texas Civil Statutes, Article 601d.

(2) Authority—The Texas Public Finance Authority, together with any successor to its duties and functions.

(3) Board—The board of directors of the authority, the governing body of the authority.

(4) Bond Review Board—The Bond Review Board as created by the Texas Legislature pursuant to Texas Civil Statutes, Article 717k-7.

(5) Bonds—General obligation bonds and/or revenue bonds issued by the authority pursuant to the constitutional provision and the Act, or the Act.

(6) Capitalized interest—That portion of the proceeds of bonds which represents interest to be capitalized and payable prior to completion of acquisition, construction, or renovation of the projects being financed with such bonds.

(7) Client Agency — A state agency or institution of higher education on whose behalf the board may issue bonds and who has control of or responsibility for facilities to be financed with proceeds of such bonds.

(8) Code—The Internal Revenue Code of 1986.

(9) Comptroller—The Comptroller of Public Accounts of the State of Texas, or any successor thereto.

(10) Constitutional provision—The Texas Constitution, Article III, § 49-h, or Article III§49(e).

(11) Construction schedule—The time period and sequence of action during which the actual construction of a project or projects is planned to be accomplished.

(12) Costs of issuance—The costs related to the issuance of any issue of bonds, including, but not limited to:

(A) financing charges, including insuring principal and interest payment on the bonds or obtaining other credit enhancement for the bonds;

(B) professional fees and expenses, including architectural, engineering, surveying, and legal services;

(C) administrative expenses of the authority to the extent provided by law;

(D) the authority's or the paying agent/registrar's charges and expenses;

- (E) rating agency fees;
- (F) bond printing expenses; and
- (G) such other expenses as may be necessary or incident to issuing and marketing of the bonds.

(13) Debt service fund—Generally, the fund created in financing documents to contain money for the payment of debt service on the bonds.

(14) Disbursement—The transfer of bond proceeds from the state treasury to a cost center with the comptroller for payment of duly authorized expenses relating to a bond issue.

(15) Disbursement schedule—The schedule controlling the frequency and amounts of disbursements from bond proceeds and used for payment of duly authorized expenses relating to a project.

(16) Executive director—The executive director, or other authorized agent of the authority empowered by the board to perform the duties of the executive director.

(17) Financing documents—Those documents approved by the board relating to the issuance of bonds, including, but not limited to, bond resolutions, financing agreements, funds management agreements, and official statements.

(18) General appropriations act—Any legislative act appropriating money for the operation of state government.

(19) General obligation bond—A bond issued on behalf of the State of Texas, the repayment of which is guaranteed by the full faith and credit of the state and which has been authorized by the Texas Constitution.

(20) Legislature—The Legislature of the State of Texas. [~~MH-MR—The Texas Department of Mental Health and Mental Retardation, together with any successor to its duties and functions.~~]

(21) Memorandum of understanding—The document executed by the authority and a client [qualified] agency that defines the division of authority and responsibility between the authority and the qualified agency.

(22) Plans and specifications—The plans and specifications for each respective project, as the same may be amended from time to time.

(23) Project—Any building, structure, or other facility, and the component parts thereof, authorized by the legislature for financing from bond proceeds and which consists of acquiring, constructing, or equipping new facilities or major repair or renovation of existing facilities.

(24) Project analysis—A general description of the project including, but not limited to:

(A) a complete description of the facility or project together with a justification of such facility or project prepared by the client [qualified] agency;

(B) a detailed estimate of the amount of space needed to meet the needs of the client [qualified] agency and to allow for realistic future growth;

(C) a description of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction;

(D) an estimate of the probable cost of construction;

(E) a description of the proposed site of the project and an estimate of the cost of site preparation;

(F) an overall estimate of the cost of the project;

(G) information about alternative proposals for meeting the space needs of the client [qualified] agency by new construction, acquisition, and rehabilitation of an existing or historic structure, or a combination thereof; and

(H) other information as required by the authority.

(25) Project costs—To the extent authorized by law or regulation, all costs incurred by the authority, or any client [qualified] agency requesting financing of a project with respect to the acquisition, construction, or equipment of new facilities, or for major repair or renovation of existing facilities, as the case may be, including, but not limited to, the costs of:

(A) the acquisition of all land, rights-of-way, property rights, easements, and interests;

(B) all furnishings, machinery, and equipment;

(C) necessary contingency funds;

(D) architectural, engineering, and legal services;

(E) plans, specifications, surveys, and estimates of cost and revenue, including a master plan;

(F) contracts necessary or incident to determining the feasibility and practicability of a project;

(G) administrative expenses of the authority which are necessary and related to a project to the extent provided by law; and

(H) such other contracts as may be necessary or incident to the carrying out or start-up of any project, including the refunding or [of] refinancing of any outstanding obligations, mortgages, or advances issued, made, or given by any person for any of the aforementioned costs.

(26) Project fund—The fund created in financing documents for the payment of project costs.

[Qualified agency—Any agency of the State of Texas designated by the legislature which has control of or responsibility for facilities to be financed pursuant to applicable law.]

(27) Regulations—The Income Tax Regulations promulgated pursuant to the Code.

(28) Revenue bond—A bond issued by the authority, the repayment of which depends on:

(A) the pledge of all or any part of the designated rents, issues, and profits from leasing the project to the state through the [State Purchasing and General Services Commission or occupying or] client [qualified] agency [or institution]; or

(B) from any other source of funds lawfully available to the authority. [SPGSC—The State Purchasing and General Services Commission, together with any successor to its duties and functions.]

(29) TDCJ [TDC]—The Texas Department of Criminal Justice [Corrections], together with any successor to its duties and functions.

[TYC—The Texas Youth Commission, together with any successor to its duties and functions.]

[Texas Public Finance Authority Act—Texas Civil Statutes, Article 604d, as amended.]

~~[Treasurer—The State Treasurer of the State of Texas, or any successor thereto.]~~

~~[Using agency—Qualified agency.]~~

§221.3. Bond Issuance Process [Notice of Request for Bond Issue].

(a) Preliminary Requirements. Following a legislative session in which bonds have been authorized for a project, the authority and the client agency will confirm basic information concerning the bond issue, such as the time, amount, and scope of the project, and schedule an orientation meeting at their mutual convenience. In most cases, a formal orientation meeting will be required and such a meeting should occur before the authority must begin work on the bond issue, but after the client agency has had sufficient time to prepare a preliminary plan for the project.

(1) As part of the orientation, the authority will provide the client agency the following information:

(A) an explanation of the bond issuance process in plain language;

(B) a review of the specific tasks required for a bond issue and the time needed for such tasks;

(C) a review of the documents, other information, if any, and time requirements applicable to the client agency's request for financing; and

(D) an identification of the authority's staff and outside consultants who will work on the financing, by name and function.

(2) The client agency should be prepared to review a detailed project description and project schedule during the orientation meeting and identify the client agency's staff who will work with the authority on the bond issue.

(3) If a client agency's staff is familiar with the bond issuance process and the authority's requirements for issuing bonds because they have participated in prior bond issuance transactions, a formal orientation meeting is not required. The executive director will insure that up-to-date information described in subparagraphs (A)-(D) of subsection (a) (1) of this section is provided to the client agency in an alternative manner such as by schedules, memorandum, or telephone conference. [A qualified agency requesting the authority to issue bonds on its behalf shall submit a written notice to the authority no later than 12 weeks prior to the projected date for issuance.]

(b) Request for financing. A request for financing ~~[notice of request for bond issuance]~~ under this section shall include:

(1) a [executed] resolution of the client [qualified] agency's governing board signed by the appropriate officer authorizing submission of the request for financing [bond issue];

(2) a project analysis, [copy of the information] required by the authority for application to the Bond Review Board, except as provided in subsection (b) of §221.4 (relating to Criteria for Issuance of Bonds); [and]

(3) a schedule of actions required to be accomplished by the client [qualified] agency prior to the first actual disbursement of funds after issuance; and

(4) a disbursement schedule.

(c) Amendment to request for financing. A client [qualified] agency may reschedule the date requested for authority consideration of the bond issuance by submitting an amendment to its request for

financing at any time prior to the authority board meeting at which the issue will be considered.

(d) Board action. The request for financing will be posted for consideration by the board at its next regularly scheduled open meeting following the authority's receipt of the request. Since the board's regularly scheduled open meetings are held usually on the third Wednesday of each month, if the client agency's request is received by the second Tuesday of the month, it will be timely for board consideration in the month in which it is received. The client agency will be informed promptly of a change in the board's meeting date for the month and the exact date on which the request will be considered.

(1) The board may either approve the request or require additional information. When it approves a request for financing, the board will also determine the method of sale of the bonds, either negotiated or competitive.

(2) If the board determines to sell the bonds through a negotiated sale, it will designate an underwriting syndicate in accordance with authority's underwriters selection procedures.

(3) If the board determines to sell the bonds through a competitive sale, it will authorize the executive director and financial advisor to issue an invitation for competitive bids in the time and manner required so that the board may accept a bid, and sell the bonds, at its open meeting in the month immediately following.

(e) Procedures following board approval of a request for financing. As soon as possible following the board's approval of a request for financing, the authority staff, financial advisors, bond counsel, representatives of the client agency, and, for negotiated sales, the senior manager of the underwriting syndicate and its counsel, will convene an organization meeting to prepare a schedule of events for the financing, and begin work on the financing documents and an application for Bond Review Board approval of the financing.

(1) In most cases, the application for Bond Review Board approval will be submitted timely for consideration and approval of the Bond Review Board at its meeting in the month following the board's approval of the request, however, the timing of the submission is within the discretion of the executive director.

(2) After the Bond Review Board approves the financing, the issuance and sale of the bonds may be scheduled and completed.

§221.4. Criteria for Issuance of Bonds.

(a) The authority shall not issue bonds to finance any project or cost related thereto, unless:

(1) the project has been specifically authorized by the Act, the General Appropriations Act, or other applicable law;

(2) the authority board has accepted the request for financing [bond issue] and has determined to proceed with the issuance of bonds;

(3) the governing body of the client [qualified] agency requesting such financing has authorized the execution of a memorandum of understanding between the client [qualified] agency and the authority relating to the specific bond issue and has agreed to necessary financing documents as may be appropriate and consistent with these sections;

(4) the bond issuance and the projects have been reviewed and approved by the Bond Review Board or any other agency required to review such bond proceedings or approve projects as authorized by law;

(5) the governing body of the client [qualified] agency has by resolution authorized the execution and performance of the financing documents; and

(6) the board has approved the related financing documents.

(b) In the event proceeds are to be used to finance a project of the TDCJ [TDC], the TDCJ [TDC] must have submitted to the Bond Review Board a master plan for correctional facilities prior to disbursement of bond proceeds.

(c) The authority assumes no responsibility in connection with the eligibility of any specific project for financing nor with respect to the need for such project or that any project will comply with any legal requirement, except to review legislation authorizing the project, the approval process with respect to the project, including Bond Review Board approvals, and provide a proper description of the project in bond offering documents if required.

(d) The authority may request the assistance of the client [qualified] agency in complying with Bond Review Board, rating agency, attorney general, financial advisor, bond counsel, or other requests required for approval of the bond issue.

§221.5. Procedure for Disbursement of Bond Proceeds.

(a) Unless otherwise indicated herein, proceeds of bonds shall be distributed by the comptroller [treasurer] pursuant to the terms of the financing documents.

(b) Upon the closing of each series of bonds, the purchasers thereof shall pay the proceeds thereof in immediately available funds to the comptroller [treasurer].

(c) The executive director shall certify to the comptroller and to the qualified agency requesting such financing that the funds are available and have been deposited with the comptroller [treasurer] for the purpose of financing the related project.

(d) The executive director shall certify to the comptroller [treasurer] the specific amounts to be transferred from the project fund to the debt service fund. The executive director shall then instruct the comptroller [treasurer] from time to time to pay the costs of issuance in such amounts as specified by the executive director from the project fund. The qualified agency shall request disbursement of funds for the purpose of paying project costs in accordance with the provisions of the financing documents for a particular issue. The proceeds shall be invested by the comptroller [treasurer] with the concurrence of the authority until such time as the costs of issuance and project costs are paid.

(e) The client [qualified] agency requesting financing from the authority shall make or cause to be made payment of project costs from the project fund in accordance with the contracts therefor and shall provide a written monthly report to the authority of the activity on each project in compliance with the reporting provisions of the financing documents. The authority will not assume any responsibility for the actual acquisition, construction, equipment, repair, or renovation of any project or the operation or maintenance thereof, but the authority may inspect projects at reasonable times upon reasonable notice to the client [qualified] agency.

(f) No payments from the project fund may be made for any purpose other than paying costs of issuance and project costs, depositing amounts to any rebate fund for the benefit of the federal government in compliance with the Code, or deposit to the debt service fund of amounts remaining after payment of project costs.

(g) If any proceeds of the bonds remain in the project fund after the completion of a project and depositing amounts to any rebate fund for the benefit of the federal government in compliance with the Code, except the amounts specified by the client [qualified] agency requesting such financing from the authority to be retained for any amount of any project costs not then due and payable or the liability for payment of which is being contested or disputed by the qualified agency and all labor, services, materials, and supplies used in the project have been fully paid and all costs and expenses incurred in connection therewith have been paid, then the client [qualified] agency requesting such financing from the authority shall cause such proceeds to be transferred from the project fund to the debt service fund; provided, however, that if the legislature has authorized additional projects of the same nature as the project theretofore financed during such time period, the board may, by formal resolution and if permitted by law, authorize the use of such amounts for such additional projects.

(h) If the bonds are intended by the board to bear interest which is not includable in gross income of the recipient pursuant to the Code, the use of proceeds of the bonds shall be restricted in such manner and to such extent, as may be necessary, to obtain and retain such tax exemption, including restrictions so that the bonds will not constitute arbitrage bonds under the Code, §149(d), (relating to advance refundings), unless otherwise prescribed by law. The requirements of this section are subject to and shall be interpreted in accordance with the Code, §148.

(i) The plans and specifications will be on file at the client [qualified] agency and available at all times for inspection by the authority.

§221.6. Complaints to the Authority.

In accordance with the requirements of §9D of the Act, the authority will notify client agencies of the name, mailing address, and telephone number of the authority for the purpose of directing complaints to the authority by direct mail, notifying and reminding client agencies periodically of the authority's electronic mail address, and by distributing a fact sheet on the authority during the orientation meeting described in section in §221.3 (relating to the bond issuance process) of this Chapter 221.

This 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 July 1, 1998.

TRD-9810456

Judith M. Porras

General Counsel

Texas Public Finance Authority

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 463-5544



Chapter 222. Public Records

34 TAC §222.1

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

The Texas Public Finance Authority (Authority) proposes the repeal of §222.1, relating to charges for public records. The section provides definitions of terms and establishes charges applicable to various types of public information. The section

was adopted under the Public Information Act, Government Code, Chapter 552 (Act), in effect until September 1, 1997. Until September 1, 1997, §552.2611 of the Act required each state agency to specify its charges for public information in rules. Section 552.2611 of the Act was repealed effective September 1, 1997, by Chapter 1231, Acts. 75th Legislature (1997). As amended by Chapter 1231, the Act now requires the Authority to use rules adopted by the General Services Commission in determining charges for providing copies of public information. Therefore §222.1 is no longer necessary.

Kimberly K. Edwards, Executive Director, has determined that for the first five years the section is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Edwards also has determined that for each year of the first five years the section is in effect, the public benefit will be the elimination of potential confusion and conflict for staff and the public as to the authority's charges for public information. There is no anticipated cost to persons or small businesses, who may be required to comply with the section. There will be no effect on local employment.

The repeal is proposed under the authority of Texas Civil Statutes Article 601d which authorizes the Authority to adopt rules to carry out the duties assigned to the Authority by that article.

Comments may be submitted to Kimberly K. Edwards, Executive Director, Texas Public Finance Authority, 300 West 15th Street, Suite 411, Austin, Texas 78711, Fax Number (512) 463-5501, or by electronic mail at kedwards@tpfa.state.tx.us.

The repeal affects the Government Code, Chapter 552.

§222.1. Charges for Public 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 July 1, 1998.

TRD-9810457

Judith M. Porras

General Counsel

Texas Public Finance Authority

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 463-5544



Chapter 223. Master Equipment Lease Purchase Program

34 TAC §§223.1-223.7

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

The Texas Public Finance Authority (authority) proposes the repeal of §§223.1-223.7, concerning the master equipment lease purchase program (MLPP). The sections articulate the purpose of the sections, provide definitions of terms, provide procedures for financing equipment, and explain the costs of the MLPP and how such costs will be paid. The sections were adopted in October 1992 to implement Series A of MLPP

financing for state agencies. Shortly thereafter, in March 1993, the authority expanded the MLPP, established Series B of MLPP, and consolidated Series A into Series B. Currently, only the MLPP Series B is used to finance equipment for state agencies, and therefore, the sections adopted to implement Series A of MLPP are no longer necessary.

Kimberly K. Edwards, Executive Director, has determined that for the first five years the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Ms. Edwards also has determined that for each year of the first five years the sections are in effect, the public benefit will be the elimination of unnecessary administrative rules, preventing any possible conflict or confusion. There is no anticipated cost to persons or small businesses, who may be required to comply with the section. There will be no effect on local employment.

Comments may be submitted to Kimberly K. Edwards, Executive Director, Texas Public Finance Authority, 300 West 15th Street., Suite 411, Austin, Texas 78711, Fax Number (512) 463-5501, or by electronic mail at kedwards@tpfa.state.tx.us.

The repeal is proposed under the authority of Texas Civil Statutes Article 601d, which authorizes the authority to adopt rules to implement the requirements of the Article.

The repeal will affect Texas Civil Statutes, Article 601d.

§223.1. Purpose of the Rules.

§223.3. Definitions.

§223.5. Procedures for Financing Equipment.

§223.7. Recovery of Costs.

This 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 July 1, 1998.

TRD-9810458

Judith M. Porras

General Counsel

Texas Public Finance Authority

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 463-5544



Chapter 225. Master Equipment Lease Purchase Program, Series B

34 TAC §§225.1, 225.3, 225.5

The Texas Public Finance Authority (Authority) proposes amendments to §§225.1, 225.3, and 225.5, concerning the master equipment lease purchase program (MLPP). The sections articulate the purpose of the sections, provide definitions of terms, provide procedures for financing equipment, and explain the costs of the MLPP and how such costs will be paid. The amendments are non-substantive technical amendments to update and clarify requirements of the program.

Kimberly K. Edwards, Executive Director, has determined that for the first five years the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Edwards also has determined that for each year of the first five years the sections are in effect, the public benefit will be updated, complete administrative rules. There is no anticipated cost to persons or small businesses, who may be required to comply with the section. There will be no effect on local employment.

Comments may be submitted to Kimberly K. Edwards, Executive Director, Texas Public Finance Authority, 300 West 15th Street, Suite 411, Austin, Texas 78711, Fax Number (512)463-5501, or by electronic mail at kedwards@tpfa.state.tx.us

The sections are proposed under the authority of Texas Civil Statutes Article 601d, which authorizes the Authority to adopt rules to implement the requirements of the Article.

The sections will effect Texas Civil Statutes Article 601d.

§225.1. Purpose of the Rules.

The Texas Public Finance Authority proposes these new rules, as Chapter 225, concerning the administration of the State of Texas Master Lease Purchase Program authorized by Texas Civil Statutes, Article 601d§9A[; for which debt service payments only have been appropriated and are to be applied as lease payments. Therefore, the comptroller's intercept is not included herein]. This chapter defines certain terms pertaining to the operation of the Texas Master Lease Purchase Program, identifies the responsibilities of various parties in administering the Texas Master Lease Purchase Program, and establishes basic procedures under which state agencies may participate in the Texas Master Lease Purchase Program.

§225.3. Definitions.

[Notwithstanding the definitions set forth in §221.3 and §223.3 of this title (relating to Definitions), the] The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act—The Texas Public Finance Authority Act, Texas Civil Statutes, Article 601d, as amended.

(2) Administrative costs—The reasonable costs incurred by the authority in developing, administering, and monitoring the program, which costs include, but are not limited to fees for the paying agent, the dealer, the servicing agent, and the authority's operational charges.

(3) Amortization schedule—A detailed schedule of principal and interest payments and administrative costs due for each lease payment as required under the master lease agreement and contained in each lease supplement. The principal amount will include the purchase price of the eligible projects and the costs of issuance, which will be separately itemized.

(4) Authority—The Texas Public Finance Authority, or any successors or assignees to its duties and functions.

(5) Authorized representative—That person(s) duly authorized by a client agency and the authority to execute and deliver a master lease agreement and lease supplement(s) and such other documents as are deemed necessary or appropriate to implement the program.

(6) Board—The board of directors of the authority.

(7) Bond Review Board—The board created by Texas Civil Statutes, Article 717k-7, or any successors or assignees to its duties and functions.

(8) Bundled purchases—Those purchases of multiple eligible projects individually valued at a minimum of \$500 for and on

behalf of one or more client agencies, which are aggregated into one vendor contract for acquisition.

(9) Client agency—Any state agency that wants to use the program to finance eligible projects and [which] has the authority, pursuant to applicable law, to do so [~~to finance eligible projects through the program~~].

(10) Comptroller—The Comptroller of Public Accounts of the State of Texas, or any successors or assignees to its duties and functions.

(11) Comptroller's interagency agreement—The provision contained in the master lease agreement and in the lease supplements authorizing the authority to access each client agency's appropriated funds to pay debt service on the program by delivering payment vouchers to the comptroller drawn on the client agency's designated funds.

(12) Costs of issuance—All costs associated with the program, including, but not limited to, printing costs, costs of preparation of documents, and fees to rating agencies, financial advisor, credit and liquidity providers, bond counsel, and underwriters.

(13) Debit memo—The notice provided to each client agency within 30 days after each lease payment. The debit memo will include the name of the client agency, each lease supplement by identifying number, the eligible project, the total amount paid reflected as principal and interest payments, administrative costs, the payment date, credit, if any, and the remaining principal balance.

[~~DIR—The Department of Information Resources of the State of Texas, or any successors or assignees to its duties and functions.~~]

(14) Eligible project—Any physical structure that has been authorized by the legislature for the authority to finance and is used by a client agency to conduct official state business, together with the land and major equipment or personal property that is functionally related to the physical structure, or any other fixed asset used by a client agency to conduct official state business, including, without limitation, telecommunications devices or systems, automated information systems, computers and computer software, provided, that such property has a useful life of at least three years, and a value of at least \$10,000, valued either individually or as a group of individual items of property, each having a minimum value of \$500 per item.

(15) Fees—The amount assessed each client agency for participating in the program. Fees include the costs of issuance and administrative costs.

[~~GSC—The General Services Commission of the State of Texas, or any successors or assignees to its duties and functions.~~]

(16) Interim financing—The initial financing source by which eligible project may be financed if it is deemed advisable by the authority. Interim financing will occur when the authority issues its Master Lease Purchase Program Tax-Exempt Commercial Paper Revenue Notes (the notes) in various amounts, not to exceed \$300 million outstanding at any one time.

(17) LBB—The Legislative Budget Board of the State of Texas, or any successors or assignees to its duties and functions.

(18) Lease payments—Those amounts specified in the lease supplements and made pursuant to the comptroller's intercept payable semiannually on the first day of February and the first day of August. The term "lease payments" also includes all payments made while the eligible project is in the interim financing and to lease revenue bond holders.

(19) Lease revenue bonds—The long-term bonds issued by the authority either to refinance eligible project that has been initially finance through interim financing, or to fund the purchase of eligible project

(20) Lease supplement—A form promulgated by the authority to be executed by each client agency which incorporates the terms of the master lease agreement and other agreements under the program. The lease supplement shall specifically identify the eligible project to be financed, including the serial number or other state identification number, the exact amount to be paid, the payee, and any updates or corrections to the request for financing.

(21) Master lease agreement—The master lease agreement is the contract executed between the authorized representative of each client agency and the authority, containing such terms and provisions necessary to authorize the client agency to participate in the program and the authority to make payments on behalf of the client agency for the purchase of eligible project as specifically set forth in each lease supplement.

(22) Program—The State of Texas Master Lease Purchase Program described in these rules to be carried out by the authority for the purpose of financing or refinancing of eligible projects.

(23) Progress payments—Periodic payments for eligible projects to be made during installation of and prior to acceptance of such eligible project by the client agency which payments are set out in an agreement with the vendor. The agreement must provide for specific payments corresponding to completion of definitive components sufficient to create identifiable collateral.

(24) Request for financing—A written request from a client agency to the authority to finance the acquisition of an eligible project through the program. Such request for financing shall include an itemized description of the eligible project prepared by the client agency including the estimated cost of acquisition, the estimated useful life of the project, the proposed date(s) of delivery and acceptance of the eligible project, the proposed use of the eligible project, and the source of funds to be used by the client agency to make the payments for the eligible project, and any one of the following documents:

(A) a copy of the purchase order for eligible project [~~issued by GSC which, when received by GSC, should be immediately forwarded by GSC to the authority~~];

(B) a copy of the contract prepared and awarded by the Texas Department of Information Resources [~~DIR~~] for an eligible project[, or for bundled purchases, which when executed by DIR should be immediately forwarded by DIR to the authority]; or

(C) any awarded contract for an eligible project, or for bundled purchases, a copy of which is sent to and received by the authority and which may be generated by any client agency.

(25) State agency—A board, commission, department, office, agency, institution of higher education or other governmental entity in the executive, judicial, or legislative branch of state government.

(26) State lease fund—The fund by that name created by the Act [~~and the General Appropriations Act, 72nd Legislature, First Called Session~~].

(27) Statement of acceptance—A statement contained in the lease supplement, executed by the client agency, which states that the eligible project has been received, inspected, and found to be in fully acceptable condition by the client agency, that all approvals, if

any, have been obtained and that all other requirements of law have been satisfied and authorizing the authority to provide payment to the vendor.

~~[Treasurer—The state treasurer of the State of Texas, or any successors or assignees to its duties and functions.]~~

§225.5. *Procedures for Financing Eligible Projects.*

(a) A client agency shall submit a request for financing when it is prepared to proceed with a program financing. A resolution of the client agency's governing body which authorizes the request for financing and the execution of documents required under the program shall be submitted with the request. Upon receipt of a request for financing the authority will review such request for completeness and compliance with program rules. If the request for financing is found to be complete and in compliance, the authority will accept the request for financing.

(b) Upon acceptance of the request for financing, if the client agency has not previously participated in the program, the authority will forward to the client agency a copy of the master lease agreement to be executed by an authorized representative. The master lease agreement is not subject to revision by the client agency and, when executed by the client agency's authorized representative and the authority, will serve as the basis for all future purchases of eligible project under the program.

(c) After the client agency has taken delivery and acceptance of the eligible project and determined that it meets all requirements for payment in full to the vendor, the client agency will prepare the payment voucher together with all documents required by the comptroller and will execute four copies of the lease supplement which also contains the statement of acceptance of the eligible project and will forward all copies along with the payment voucher and all other documents to the authority. The authority will immediately execute all four copies of the lease supplement, return one copy to the client agency, and forward one copy to the comptroller.

(d) After the client agency has taken delivery and acceptance of the eligible project and determined that it meets all requirements for payment in full to the vendor, the client agency will prepare the payment voucher together with all documents required by the comptroller and will execute four copies of the lease supplement which also contains the statement of acceptance of the eligible project and will forward all copies along with the payment voucher and all other documents to the authority. The authority will immediately execute all four copies of the lease supplement, return one copy to the client agency, and forward one copy to the comptroller.

(e) The authority will make a determination to initially fund the eligible project through the interim financing or through the issuance of lease revenue bonds. Such determination will be within the sole discretion of the authority.

(f) The authority will effect the payment in full to the vendor, or partial payment if the eligible project has been designated for progress payments.

(g) Upon receipt of the lease supplement, the authority and the comptroller will effect the comptroller's intercept to provide for the lease payments.

(h) No later than on or before 48 hours prior to a lease payment, the authority will submit a voucher directing the comptroller to transfer sufficient monies from each client agency into the state lease fund the authority will provide a voucher to the comptroller to effect debt service payment. The treasurer will then transfer monies out of the state lease fund and make lease payments.

(i) Within 30 days following each lease payment, the authority will provide a debit memo to each client agency.

(j) The authority may issue lease revenue bonds in order to refinance the lease supplements initially funded through the interim financing. The final maturity of lease revenue bonds shall not exceed the latest maturity of the lease supplements being financed upon the occurrence of any of the following events:

(1) any date on which the aggregate volume of lease supplements then being financed through the interim financing reaches \$75 million; or

(2) 30 days prior to the end of any state biennial appropriation period which is currently August 31 of odd-numbered years.

(k) The authority may adjust the lease payments under a lease supplement as a result of a change in interest rates, or a refinancing, or a change in administrative costs. When such adjustment in lease payments is effected, the authority will, concurrent with establishing the new interest rate, provide an amended amortization schedule reflecting the adjusted lease payments to the comptroller and to each client agency.

(l) At least once during each fiscal year of the state the authority will forward to the Legislative Budget Board (LBB) a schedule, by client agency, of all lease payments. The authority will use its best efforts to ensure that the staff of the LBB will include in its budget recommendation sufficient appropriations to make all lease payments required under the program.

(m) All books and records of the authority will be available to the LBB, the comptroller, the state auditor's office, client agencies, and other interested parties which may, from time to time, request access to information regarding the program.

(n) All issuances of lease revenue bonds under the program will comply with all approvals required for the public issuance of debt by a state agency, including review and approval by the Bond Review Board and the attorney general.

This 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 July 1, 1998.

TRD-9810459

Judith M. Porras

General Counsel

Texas Public Finance Authority

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 463-5544

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Subchapter B. Placement Planning

37 TAC §85.35

The Texas Youth Commission (TYC) proposes new §85.35, concerning special circumstances: multiple commitment orders.

The new section will govern the management of youth committed to TYC under concurrent determinate sentence and indeterminate commitment orders.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 greater protection for the public. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new rule is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§85.35. Special Circumstances: Multiple Commitment Orders.

(a) Purpose. The purpose of this rule is to govern the management of youth committed to TYC under concurrent determinate sentence and indeterminate commitment orders.

(b) Applicability. This policy applies only to youth committed to TYC under both a determinate sentence and an indeterminate commitment order for separate offenses.

(c) Notwithstanding all other rules effecting the management of youth committed to TYC under indeterminate or determinate orders, rules of this section effect the management of those under concurrent indeterminate and determinate orders.

(d) Both commitment orders will be given effect, with the determinate sentence order having precedence. Any movement and transfer options available under the determinate sentence order and determined to be appropriate, must occur prior to completion of the determinate sentence.

(e) Classification. The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(f) Minimum Period of Confinement and Minimum Length of Stay. Both orders are given effect, i.e., the minimum period of confinement under the determinate sentence and the minimum length of stay (MLS) associated with the indeterminate commitment will run concurrently. If the applicable minimum period of confinement under the determinate sentence is completed before the applicable MLS under the indeterminate commitment, the youth will not be considered for release until the MLS has also been completed.

(g) Discharge. The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal

discharge criteria are met. Under this rule, the youth will likely remain under TYC supervision until age 21.

This 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 July 13, 1998.

TRD-9810974

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 424-6244



Chapter 93. Youth Rights and Remedies

37 TAC §93.15

The Texas Youth Commission (TYC) proposes new §93.15, concerning youth mail. The new section will establish specific practices for handling youth mail while they are in a TYC facility.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 increased safety of staff and youth in TYC facilities. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine the appropriate treatment and restriction of youth in custody.

The proposed rule implements the Human Resource Code, §61.034.

§93.15. Youth Mail.

(a) Purpose. The purpose of this section is to establish certain rules affecting a TYC youth's right to correspond freely through the mail except when such correspondence presents a risk to the a facility security and order.

(b) Applicability.

(1) For rules regarding mail correspondence to attorneys and courts, see (GAP) §93.11 of this title (relating to Access to Attorneys and Courts).

(2) See (GAP) §93.1 of this title (relating to Basic Youth Rights).

(c) Youth have the right to correspond freely through the mail subject only to limitations necessary to maintain facility safety, order, and security.

(d) No incoming or outgoing youth mail will be read or censored. Incoming mail will be opened and inspected for contraband in the presence of the youth.

(e) Mail containing or reflecting contraband may be rejected. A youth whose mail has been rejected is notified.

(f) Each TYC facility will provide for postage for three letters per week per youth. TYC will provide an unlimited number of stamps and writing material to youth for use in contacting attorneys or courts.

(g) When the youth bears the mailing cost, there shall be no limit on the volume of letters he/she may send or receive. Youth at the orientation and assessment unit will be limited to the postage provided by TYC since they are not allowed to have personal funds.

(h) Youth will be encouraged to maintain contact with family members through the mail.

(i) Rules regarding mail will be made available to all youth and youths' parents.

(j) Funds for a youth received through the mail may be credited to the youth's trust fund, except youth at Marlin Orientation and Assessment Unit where youth shall not be allowed personal funds. Any facility may refuse to accept money sent through the mail if not sent in accordance with facility rules. Such money items will be returned to the sender. See (GAP) §99.31 of this title (relating to Youth Banking).

(k) Incoming and outgoing letters are held for no more than 24 hours and packages are held for no more than 48 hours, excluding weekends and holidays.

(l) First class letters and packages will be forwarded to the youth's assigned placement following transfer or release.

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

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810975

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 424-6244



Chapter 97. Security and Control

Subchapter A. Security and Control

37 TAC §97.11

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

The Texas Youth Commission (TYC) proposes the repeal of §97.11, concerning disposition of unauthorized items seized. This section is being repealed to allow for the publication of a new section.

Terry Graham, Assistant Executive Deputy Director for Financial Support, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be greater security and protection for TYC youth and staff. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

§97.11. Disposition of Unauthorized Items Seized.

This 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 July 13, 1998.

TRD-9810977

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 424-6244



The Texas Youth Commission (TYC) proposes new §97.11, concerning control of unauthorized items seized. The new section will provide for the preservation, control, and/or disposition of all contraband including physical evidence obtained in connection with a violation of law and/or major rule violation.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 greater security and protection for youth and staff. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine the appropriate treatment/restriction of youth in custody.

The proposed rule implements the Human Resource Code, §61.034.

§97.11. Control of Unauthorized Items Seized.

(a) Purpose. The purpose of this policy is to provide for the preservation, control, and/or disposition of all contraband including physical evidence obtained in connection with a violation of law and/or major rule violation.

(b) Applicability. This rule applies to contraband items related to youth in TYC residential facilities.

(c) Contraband - Minor Rule Violation. Seized contraband consisting of sexually explicit pictures, or items which advocate delinquent subculture values shall be either destroyed or forwarded to the youth's parents or managing conservator, at the youth's option unless an investigation is initiated. If an investigation is initiated, the evidence shall be retained by the evidence custodian until the completion of all investigations.

(d) Contraband - Potential Evidence.

(1) Seized contraband which constitutes a major rule violation that may be used as evidence in a due process proceeding will be properly identified, documented, and stored until no longer needed as evidence.

(2) The facility administrator will designate an evidence custodian to maintain contraband in a key-locked secure location and to ensure a chain of custody until the item is no longer needed. The key shall be accessible only to the facility administrator and evidence custodian.

(3) Any staff discovering or taking possession of contraband shall be responsible for its preservation until transferred to the appropriate authority.

(4) Depending on the nature of the investigation, the evidence may be given to law enforcement authorities.

(5) After all administrative/legal proceedings have been concluded, the items shall be destroyed in the presence of at least two staff members, sent to the youth's home or returned to the owner if other than a TYC youth.

(e) Contraband/Evidence in a Potential Crime Scene. A potential crime scene could be an apparent death, major injury, sexual assault and/or major property damage. The area shall be immediately secured and access prohibited into the potential crime scene or area containing potential evidence. Staff discovering a potential crime scene shall immediately notify the facility administrator. Staff shall not enter the area to clean or disturb the potential evidence, clothing, body fluids, etc. until authorized by the facility administrator. Only investigating law enforcement personnel should handle the evidence.

(f) Money as Contraband. Money seized as contraband will be deposited in the trust fund of the youth from whom it is taken, unless other ownership can be established. If ownership cannot be established, it will be deposited in the student benefit 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.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810976

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 424-6244

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Chapter 99. General Provisions

Subchapter B. Youth Funds

37 TAC §99.31

The Texas Youth Commission (TYC) proposes an amendment to §99.31, concerning youth banking. The amendment will establish additional procedures for the maintaining student trust funds for youth committed to TYC.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 more efficient use of government resources. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0432, which provides the Texas Youth Commission with the authority to deposit money which belongs to a child committed to the commission in a trust fund established by the facility operated by the commission to which the child is assigned. The commission has the authority to adopt rules governing the administration of the fund.

The proposed rule implements the Human Resource Code, §61.034.

§99.31. Youth Banking.

(a) (No change.)

(b) A student trust fund account will be maintained for each youth receiving personal funds while in residential placement in a TYC institution or halfway house except youth at the orientation and assessment unit.

(c) The facility director/administrator is the trustee for the Student Trust Fund in his or her program.

(d) TYC will not be responsible for cash sent through the mail which is not received.

(e) Funds sent to a youth through the mail must be sent according to instructions provided by TYC or may be returned to the sender. Parents will be provided all instructions.

(1) Envelopes containing funds for youth must be addressed to the facility business office.

(2) Any check, money order, or cashier's check must be payable to the youth's facility with the youth's name and TYC number on the check.

(f) Funds from deposit of personal checks will not be available for use for 10 days to allow funds to clear the financial institution.

(g) [(e)] A youth will be [is] given [a] an official student trust fund receipt for money deposited to the trust fund. A youth will be given a temporary receipt effective until the funds are either deposited or returned to the sender. If the funds and accompanying correspondence are returned, the youth will be given a copy of the correspondence.

(h) [(b)] A youth may have no more cash in his personal possession than the amount authorized by the program rules. All money belonging to a youth in excess of the amount authorized for personal possession is placed in his/her student trust fund at the youth's institution or halfway house placement. [A youth may have no more cash in his personal possession than the amount authorized by the program rules.]

(i) [(d)] A youth may withdraw money for specific purposes according to need and level of responsibility.

(j) TYC may not withdraw money from a youth's trust fund without the youth's consent except the exact amount which may be deducted for a charge to TYC by a bank for a problem related to the youth's deposit, e.g., for insufficient funds.

(k) [(e)] Youth with adequate balances are given the opportunity to establish a savings account when their remaining length of stay in the facility would justify the amount of staff time required to set up the individual savings account. Youth must maintain a minimum balance equal to or greater than the lowest minimum balance required without a service charge by a bank located within a reasonable distance from the facility. Interest on personal funds accrues to the youth.

This 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 July 13, 1998.

TRD-9810978

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 424-6244

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Part XI. Texas Juvenile Probation Commission

Chapter 348. Juvenile Justice Alternative Education Programs

The Texas Juvenile Probation Commission proposes new §§348.101 - 348.112 and §§348.501 - 348.504. The purpose of these proposed rules is to establish minimum operational, programmatic, and educational standards for juvenile justice alternative education programs (JJAEP) in Texas.

Linda Brooke, Director of Education Related Services, has determined that for the first five year period the standards are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new standards.

Ms. Brooke has also determined that for each year of the first five years the new standards are in effect, the public benefit anticipated as a result of enforcement will be to ensure basic

guidelines are in place for operating juvenile justice alternative education programs. There are no anticipated economic costs to persons who are required to comply with these standards as proposed. There will be no effect on small businesses.

Comments on the proposed standards may be submitted to Linda Brooke at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

Subchapter A. Program Operations

37 TAC §348.101-348.112

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§348.101. Purpose.

The purpose of this chapter is to establish minimum operational, programmatic, and educational standards for juvenile justice alternative education programs (JJAEP) in Texas.

§348.102. Definitions.

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

(1) Attendance Days—The actual number of instructional days a student is enrolled and in attendance at the JJAEP for a minimum of 4 hours per day.

(2) Exit Reason—The reason a student exits the JJAEP program. A student shall be accounted for in only one of the following categories.

(3) Completed program/returned to home school while on probation—Student has returned to home school district while still under terms of probation.

(4) Completed program/term of probation expired—Student has returned to home school district due to expiration of probation order.

(5) Completed program/term of placement ended—Student returned to home school district due to termination of expulsion status and probation status.

(6) GED Completion—Student has successfully tested and passed the high school equivalency examination.

(7) Graduated—Student has completed all necessary requirements to receive a high school diploma.

(8) Left Program Unsuccessfully—Student has been terminated from the program due to:

(A) a probation modification or revocation;

(B) an out-of-home placement;

(C) being held in juvenile detention;

(D) being held in jail;

(E) absconding (violation of conditions of release from detention or court order);

(F) being committed to the Texas Youth Commission;

(G) being committed to the Texas Department of Criminal Justice.

(9) Other—Student who left program due to out of county move, death, medical reason, or other non-delinquency reason.

(10) Juvenile Justice Alternative Education Program (JJAEP)—An educational program operated by the juvenile board of a county to serve expelled students pursuant to Chapter 37, Texas Education Code.

§348.103. Program Administration and Organization.

(a) Policy Board. The juvenile board of the county in which the JJAEP is located shall be responsible for approving and implementing the policy for the program. The JJAEP shall be operated according to current written policies which address personnel, administration, programming, training, and standards under this chapter. The juvenile board shall conduct an annual review of the policies.

(b) Management Review. The juvenile board and the chief administrative officer shall participate in an annual evaluation of overall operations of the JJAEP. Existing policies and practices shall be reviewed to determine their continuing relevance to the mission of the facility.

(c) Required Staff. Each JJAEP shall provide the required administration, programmatic and supervision staffing as required by this section.

(1) Administration. The juvenile board shall designate a chief administrative officer.

(A) Qualifications. The chief administrative officer shall, at a minimum, hold a four-year degree from an accredited university and shall possess juvenile justice and/or education experience.

(B) Duties. The chief administrative officer shall be responsible for the management of the JJAEP and shall ensure compliance with all applicable laws related to JJAEPs. The chief administrative officer shall ensure compliance with contractual provisions of all contracts with TJPC related to JJAEPs.

(2) Instructional Staff. The juvenile board shall employ adequate instructional staff or contract for the provision of instructional services to provide appropriate educational services to students in attendance in the JJAEP. The instructional staff for the JJAEP shall include, at a minimum, one Texas certified teacher. The JJAEP shall employ or contract for the employment of the appropriate number of special education teachers as required by federal law.

(A) Qualifications Instructional staff shall, at a minimum, hold a four-year degree from an accredited university. A certified teacher shall meet the requirements of teacher certification set out by State Board for Educator Certification. A special education teacher shall meet the requirements of certification as required by the State Board for Educator Certification.

(B) Instructional Staff to Student Ratio. 1 to 16 preferred; 1 to 24 minimum required.

(3) Caseworkers. The JJAEP shall employ or contract for the employment of a minimum of one caseworker on staff. Caseworkers shall be either social workers, probation officers assigned to the JJAEP, counselors or other mental health professionals.

(A) Qualifications. All caseworkers shall meet the minimum professional requirements and shall be licensed or certified by the appropriate authority in their field.

(B) Caseworker Staff to Student Ratio. 1 to 25 preferred; 1 to 44 minimum required.

(4) Supervision Staff. The JJAEP shall employ or contract for the employment of adequate supervision staff, which may

include drill instructors, teacher aides, security personnel, caseworker aides, and volunteers.

(5) Operational Staff to Student Ratio (Includes Instructional Staff, Supervisory Staff, On-site Caseworkers, and Facility Administrators as defined above). 1 to 8 preferred; 1 to 12 minimum required. Supervision staff shall, at a minimum, possess a high school diploma or GED.

§348.104. Personnel Administration.

(a) Personnel Policies. Written policy shall be made available to each new employee at the time of hiring. The policies shall be reviewed annually and updated if necessary. The policies shall include:

- (1) employee grievance procedures;
- (2) employee evaluation procedures requiring a written evaluation at least annually; and
- (3) job descriptions including duties and responsibilities of each position.

(b) Personnel Records. The chief administrative officer shall ensure that a personnel file is maintained for each employee. The file shall, at a minimum include the application for employment, references, criminal history background check, sex offender registration check, performance evaluations, training records, and applicable personnel actions.

(c) Communicable Disease. Policy may require testing of staff for communicable diseases such as tuberculosis and hepatitis as a condition of employment and periodically thereafter.

(d) Research Programs. The chief administrative officer shall review proposals for research to ensure conformity with departmental policy. Students may voluntarily participate in approved research programs with the written consent of the student's parent, guardian or custodian. Medical, pharmacological, and cosmetic programs shall be forbidden.

§348.105. Management Information System.

(a) Data Collection. The juvenile board and the chief administrative officer shall ensure that statistical and programmatic data pertaining to each student admitted to a JJAEP are gathered and documented.

(b) Statistics. At a minimum, the following statistics shall be documented for each student in the program:

- (1) full name of student;
- (2) home physical address;
- (3) home mailing address;
- (4) home phone number;
- (5) parent, guardian or custodian name;
- (6) parent, guardian or custodian address (if different than student);
- (7) parent, guardian or custodian phone number (if different than student);
- (8) PID Number (probation identification number);
- (9) state identification number (SID);
- (10) social security number;
- (11) race;
- (12) sex;

(13) citizenship; and

(14) date of birth.

(c) Student Educational Data and Other Information. At a minimum, the following information shall be documented and contained in the case file for each student in the program.

- (1) Current Grade Level.
- (2) Notice of expulsion.
- (3) Applicable court orders placing student into JJAEP.
- (4) Education records (including special education determination and appropriate special educational records, Texas Assessment of Academic Skills summary sheet, home language survey).
- (5) Admission and exit testing data.
- (6) Physical exam (required if JJAEP has a boot-camp component).
- (7) Documentation of regular education program review of student as required by Texas Education Code Section 37.011(d).
- (8) Date of admission.
- (9) Number of attendance days.
- (10) Number of absence days.
- (11) Date of release.
- (12) Emergency notification contacts for the student.
- (13) Special medical needs, if any, of the student.

(d) Overall Programmatic Data. At a minimum, the following information shall be documented for the overall JJAEP program:

- (1) Total student attendance days.
- (2) Total student absence days.

§348.106. Curriculum.

(a) Required Courses. The JJAEP shall, at a minimum, provide the following required courses to all students in attendance at the JJAEP:

- (1) English Language Arts.
- (2) Mathematics.
- (3) Social Studies.
- (4) Science.
- (5) High School Equivalency Program (GED).
- (6) Self Discipline (may be integrated into the program and may include formal instruction in drug awareness, anger management, and impulse control).

(b) Recommended Courses. The following courses are recommended to be provided to all students in attendance at the JJAEP:

- (1) Life Skills.
- (2) Physical Fitness.
- (3) Vocational Training.
- (4) Other electives.

(c) Curriculum Development. Programs shall have a strong accelerated component to their instruction for all required area

of instruction. At least one certified teacher shall oversee the development and implementation of the curriculum in the JJAEP academic program. The juvenile board or designee shall assure that course instruction is consistent with the essential knowledge and skills of each subject of the foundation curriculum as defined under the rules of the State Board of Education under Texas Education Code Section 28.002(c). The GED must address the elements required to pass the GED test but program components may be integrated into the regular program curriculum.

§348.107. Program Requirements.

(a) Special Education. Student with disabilities who are placed in the JJAEP will be afforded education services determined by a duly constituted Admissions Review and Dismissal Committee to be appropriate for the student to receive a free and appropriate public education as defined by Federal and State laws. Both those educational and non-educational services to be provided in accordance with the student's Individual Education Plan and/or Individual Transition Plan which are not statutorily required to be provided by the JJAEP shall be provided by the school district, unless otherwise provided by the memorandum of understanding.

(b) English As A Second Language. English as a second language services and instruction shall be provided in the JJAEP and shall be appropriate to address the needs of those students who speak English as a second language or who are non-English speaking.

(c) High School Equivalency Examination (GED). GED scores on each GED test administered shall be certified by the GED examiner.

(d) Counseling. Counseling services provided by caseworkers shall be available to all students enrolled and in attendance at the JJAEP.

(e) Transportation. The transportation plan as developed in the memorandum of understanding required under Texas Education Code Section 37.011(k) shall be implemented.

(f) Meals. Policy and practice shall ensure the provision of a lunch meal for each student in attendance at the JJAEP on each school day. A student shall not be denied a lunch meal as a sanction or disciplinary measure.

(g) Medical. The JJAEP shall have a medical release on file for each student signed by the student's parent, guardian or custodian. Each student shall provide documentation of all immunizations required of public school students. If the JJAEP has a boot-camp or intensive physical fitness component, each student shall have a medical screening prior to admittance into the program performed by a licensed physician. No student shall be admitted to such a program unless the physician certifies in writing that the student has no physical limitations or conditions that would prohibit participation in the JJAEP program.

§348.108. Inter-Local Cooperation.

(a) Parent or Guardian.

(1) The JJAEP shall notify a student's parent, guardian or custodian of the student's enrollment into and exit from the JJAEP.

(2) Periodic progress reports shall be given to the student and the student's parent, guardian or custodian every 120 days or more frequently if required by local policy.

(b) School District.

(1) The JJAEP shall develop, provide and communicate a written transition plan that covers the student's entrance into and exit from a JJAEP.

(2) The JJAEP shall provide to each enrolled student's home school district the student's attendance records, grades and transition plan as well as any other records upon the student's transition back to the home school.

(3) The Administrative Officer shall transfer all grades and course credit earned to the sending school districts when a student is transferred back to the home school district.

(4) All students enrolled in the JJAEP are required to take the Texas Assessment of Academic Skills (TAAS) examination and the TAAS shall be administered at the appropriate grade level to the student at the JJAEP. All TAAS scores will be reported to the student's home school district.

(c) Juvenile Probation Departments.

(1) The JJAEP and the local juvenile probation department shall cooperate in the coordination of providing needed social services for the juvenile probationers enrolled in the JJAEP. Local probation departments shall, at a minimum, provide information to the JJAEP regarding the probation status of the juvenile, as well as the name of the juvenile's probation officer.

(2) The JJAEP shall provide the local probation department with attendance records of juvenile probationers enrolled in the JJAEP every month.

(d) Truancy. The JJAEP shall report truancy to the appropriate enforcement agency.

§348.109. Physical Plant.

(a) The facility shall conform to all applicable federal, state, and/or local ordinances and codes.

(b) The population of the facility shall not exceed the rated capacity as determined by the local fire marshal.

(c) The classroom space, fixtures and common areas shall be adequate to meet the programmatic requirements for each student enrolled and in attendance in the JJAEP.

§348.110. Security and Control.

(a) Security Plan. The JJAEP shall have a written security plan. It must address both security within the school facility, on school property or school sponsored events off school property and during transportation of JJAEP students by JJAEP staff.

(b) Transportation. Written policies shall govern the use of motor vehicles to transport juveniles enrolled in the JJAEP. Said policies shall address the method of transportation authorized, security and supervision, authorized transport personnel, and emergency procedures.

(c) Emergency Procedures. The JJAEP shall have written policies and emergency plans regarding emergency situations, including but not limited to, fire, bomb threats, hazardous weather conditions, riots, and medical emergencies. Each JJAEP shall have a minimum of two staff members on duty at all times certified in cardiopulmonary resuscitation (CPR) and first aid.

(d) Emergency Drills. Unless otherwise required more frequently by local fire codes or ordinances, the JJAEP shall conduct fire drills at least twice a year.

(e) Supervision. Students removed from the regular classroom setting and placed in isolation, administrative segregation, time-out, in-school suspension or other disciplinary removals from the regular classroom shall be under continuous visual supervision at all times. A JJAEP may use an unlocked isolation room for disciplinary purposes provided the room is safe and continuous visual supervi-

sion is possible. Electronic monitoring equipment shall not be used to substitute for required staff or continuous visual supervision.

(f) Law Violations. Written policy, procedures, and practice shall provide that all alleged violations of penal laws of this state or the United States shall be reported by the JJAEP staff to the proper law enforcement authorities if the conduct that constitutes the alleged violation occurred

(1) In any JJAEP building or facility;

(2) On the property where the JJAEP is located;

(3) On a motorized vehicle being operated by JJAEP staff that is transporting JJAEP students;

(4) At a JJAEP sponsored event either on or off the property where the JJAEP is located; or

(5) Within 300 feet of the property where the JJAEP is located

(g) Searches. Searches shall be conducted according to written policies limited to certain conditions. All students entering the JJAEP shall, at a minimum, be subjected to a pat-down search or a metal detector screening on a daily basis. JJAEP staff shall not conduct strip searches.

(h) Disciplinary Reports. Written policy, procedure, and practices shall require JJAEP staff to prepare a written disciplinary report for each incident occurring in the JJAEP that constitutes a major violation of the student code of conduct or facility rules. The disciplinary report shall be forwarded to the administrative officer within 24 hours or on the next working day.

(i) Use of Force. Use of force is justified by JJAEP staff when reasonably necessary to prevent harm to a student, JJAEP staff member or other person or persons in the JJAEP, or property. Written policy, procedure, and practice shall require the JJAEP to adopt a TJPC approved physical restraint technique. Only those JJAEP staff that are specially trained and certified in a recognized restraint program may participate in the restraint of a student. Mechanical restraints may only be used by a law enforcement officer, certified juvenile probation officer, certified detention officer, or certified correctional officer. In no event are restraint techniques justifiable as punishment, discipline, compliance or intimidation. The use of force shall be fully documented and recorded. Restraint shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury or injury to others are absent. Any restraint incident resulting in bodily injury or serious bodily injury to a student, as defined in the Texas Penal Code, shall be reported to the county juvenile board or its designee in writing within 24 hours of the incident.

(j) Abuse or Neglect. Any allegations of abuse or neglect of a JJAEP student shall be documented and reported immediately to law enforcement for investigation as required by Chapter 261, Texas Family Code.

(k) Death and Injuries. An attempted suicide or the death of a student occurring at the JJAEP shall be reported to the county juvenile board or its designee and TJPC in writing within 24 hours. Any incident resulting in bodily injury or serious bodily injury to a student, as defined in the Texas Penal Code, shall be reported to the county juvenile board or its designee in writing within 24 hours of the incident.

(l) Weapons. Only certified peace officers acting in the scope of their authority may possess and carry weapons or chemical agents within the JJAEP.

§348.111. Student Code of Conduct.

(a) Adoption. The JJAEP student code of conduct shall be adopted by the juvenile board and shall describe and define in writing the JJAEP behavior management system.

(b) Notice. The JJAEP student code of conduct shall be provided to each student and the student's parent, guardian or custodian upon admittance into the JJAEP. The code of conduct shall be reviewed with each student and the student's parent, guardian or custodian and shall be translated if necessary to ensure understanding of the content by all parties. A signed acknowledgment of receipt of the student code of conduct shall be maintained in each student's file. JJAEP staff shall be provided a copy of the code of conduct.

(c) Discipline and Sanctions. The JJAEP student code of conduct shall detail the sanctions and disciplinary procedures that may be applied to students for particular behaviors. Disciplinary procedures shall be carried out promptly and all students shall be afforded due process protections. Written rules of conduct shall include, but shall not be limited to the following:

(1) Prohibited behaviors and conduct;

(2) Disciplinary consequences for prohibited behaviors and conduct;

(3) Description of circumstances that will allow removal from the classroom; and

(4) Circumstances under which a JJAEP student may be placed into another educational setting.

(d) Prohibited Sanctions. The following sanctions shall be prohibited in the JJAEP and their prohibition shall be clearly noted in the student code of conduct:

(1) Corporal punishment, physical abuse, humiliating punishment or hazing;

(2) Deprivation of food and water; or

(3) One student sanctioning another.

(e) Dress Code. The JJAEP student code of conduct may require a reasonable dress code or uniforms for students in attendance.

(f) Grievance Procedures. Student grievance procedures shall be set out and explained fully in the student code of conduct. Procedure and practice shall facilitate student complaints of mistreatment or regarding programmatic issues and shall ensure students are protected against retaliation in any form. Grievance procedures shall provide that each child is afforded one level of appeal on all grievance complaints. A copy of each grievance submitted by a student shall be provided to the student's parent, guardian or custodian and to the juvenile board or its designee.

§348.112. Waiver.

The juvenile board may make an application to TJPC for a waiver of a standard or standards under this Chapter, excluding statutory and constitutional requirements. The Juvenile board shall submit a plan to adopt said standard or standards by a certain date and include an explanation regarding why immediate compliance is impossible. Waivers may be granted for a period not to exceed two years. Waivers may be granted pursuant to a grant contract with counties that are not required to operate a JJAEP.

This 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 July 9, 1998.

TRD-9810901
Lisa Capers
Deputy Executive Director
Texas Juvenile Probation Commission
Earliest possible date of adoption: August 23, 1998
For further information, please call: (512) 424-6681



Subchapter B. Accountability

37 TAC §§348.501-348.504

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§348.501. Mission of Program.

Academically, the mission of the JJAEP shall be to allow students to perform at grade level. The JJAEP shall provide an instructional program that results in a level of student progress that exceeds one year increase in academic performance in the areas of reading and math for one year of instruction.

§348.502. Annual Performance Evaluation.

A JJAEP's performance indicators shall be based primarily on non-academic and academic performance indicators. In evaluating a JJAEP, TJPC may consider other factors, including but not limited to, the recidivism rate of its students, classroom behaviors measured through a standardized methodology, total course credits earned and total courses passed.

(1) Non-Academic Indicator. Average rate of attendance for all JJAEP students shall not be less than 70% of the total number of student attendance days for the school year.

(2) Academic Indicator. The JJAEP may select the assessment instruments to be used in assessing student academic grade level upon entrance into the JJAEP and growth in the areas of reading and mathematics while in the JJAEP. The pre- and post-testing instruments shall be valid for measuring performance improvement with respect to grade-level equivalence for an individual student for a period of 90 days or longer. The testing instruments shall be described and submitted to TJPC in writing for review as part of the annual JJAEP programmatic approval.

(A) Pre-Tests. The JJAEP shall assess every student during the admission process. Pretests shall determine the reading and mathematics grade level for every student assigned to a JJAEP. A pre-test shall be administered to every JJAEP student no more than 30 days after the student is enrolled in the JJAEP.

(B) Post-tests. Post-tests shall evaluate the increase in academic performance of the student while in attendance at the JJAEP by measuring the progress toward grade level in the areas of reading and mathematics. A JJAEP is not required to administer a post-test to:

(i) Those students whose exit reasons are "unsuccessful" or "other" as determined by §348.102 of this Chapter and the student is unavailable for testing.

(ii) Students who have not attended a JJAEP for at least one semester or 90 cumulative full time instructional days, whichever is shorter.

§348.503. Assessment Reliability and Safeguards.

Written policy of the JJAEP shall describe the safeguards it will use to maintain the integrity of the assessment process so that all student scores reflect actual student progress.

§348.504. Performance Reports.

Each year TJPC shall publish statistical and performance data for each mandatory JJAEP. TJPC will send the report to the chairman of the juvenile board that operates a mandatory JJAEP, the chairman of the board of trustees of each school district that participates in a mandatory JJAEP, and the regional education service center having jurisdiction over the area served by the mandatory JJAEP.

This 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 July 9, 1998.

TRD-9810859

Lisa Capers

Deputy Executive Director

Texas Juvenile Probation Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 424-6681



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 18. Nursing Facility Administrators

40 TAC §§18.2-18.10, 18.15, 18.16

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

The Texas Department of Human Services (DHS) proposes the repeal of §§18.2-18.10, 18.15, and 18.16, and new §§18.2-18.10, 18.15, and 18.16, concerning the board, application procedures, criteria for determining fitness of applicants for examination and licensure, academic regulations for examination and licensure, administrators-in-training, successful completion of examination, provisional license by endorsement, license renewal and inactive status, and continuing education requirements; default orders, and criteria for licensing of persons with criminal backgrounds, in its Nursing Facility Administrators chapter. The purpose of the repeals and new sections is to comply with Senate Bill 84, passed during the regular session of the 75th Texas Legislature, that administratively transferred the rules from the Texas Board of Nursing Facility Administrators to the Texas Department of Human Services (DHS).

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

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that nursing facility administrators meet the necessary requirements to be

licensed in the state of Texas and also to promote the safety of nursing facility residents.

Questions about the content of this proposal may be directed to Renee Clack at (512) 231-5821 in DHS's Credentialing Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-327, 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 repeals are proposed under the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nursing facility administrators.

The repeals implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01.

§18.2. *The Board.*

§18.3. *Application Procedures.*

§18.4. *Criteria for Determining Fitness of Applicants for Examination and Licensure.*

§18.5. *Academic Regulations for Examination and Licensure.*

§18.6. *Administrators-in-Training.*

§18.7. *Successful Completion of Examination.*

§18.8. *Provisional License by Endorsement.*

§18.9. *License Renewal and Inactive Status.*

§18.10. *Continuing Education Requirements.*

§18.15. *Default Orders.*

§18.16. *Criteria for Licensing of Persons with Criminal Backgrounds.*

This 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 July 21, 1998.

TRD-9811474

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765



The new sections are proposed under the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nursing facility administrators.

The new sections implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01.

§18.2. *The Board.*

(a) *General introduction.*

(1) *Purpose.* The purpose of this section is to clarify the organization, administration, and other procedures and policies concerning the operation of the Texas Board of Nursing Facility Administrators (board).

(2) *Board.* The board shall be composed of nine members who will be appointed by the Governor. Three members must be selected from the general public, and six members must be nursing facility administrators licensed under the Texas Board of Nursing Home Administrators Act (Act). In addition, there shall be two non-voting ex-officio members from the Texas Department of Human Services and the Texas Department on Aging.

(3) *Terms.* Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd numbered year.

(4) *Elections.* At the meeting held nearest to August 31 of each year, the board shall elect a chair and vice-chair by a majority vote of members present.

(5) *Officers.*

(A) *Chair.*

(i) The chair shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(ii) The chair of the board shall make day-to-day decisions regarding subcommittee and board activities in order to facilitate the responsiveness and effectiveness of the board, as authorized by the board.

(B) *Vice-chair.*

(i) The vice-chair shall perform the duties of the chair in case of absence or disability of the chair.

(ii) In case the office of chair becomes vacant, the vice-chairperson shall serve until a successor is elected.

(6) *Committees.* The chair may appoint board members to committees to assist the board in its work. All committees appointed by the chair shall consist of no more than four members and shall make regular reports to the board by interim written reports or at regularly scheduled meetings. The committees shall direct all such reports to the executive secretary or a designee, if absent.

(7) *Reimbursement for expenses.* No member of the board may receive compensation for serving on the board. Each member is entitled to the per diem set by the legislature for each day that the member performs functions as a member of the board.

(8) *Meetings.* Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act.

(A) *Agendas.*

(i) The executive secretary or the executive secretary's designee shall prepare and submit to each member of the board an agenda which shall include items required by law, items requested by members, and other matters of board business which have been approved by the chair.

(ii) Any member of the public wishing to be on the agenda to present or speak on a specified topic at a meeting of the board must provide a written request to the executive secretary which shall describe the topic to be addressed. The chair may limit as appropriate the times for public participation. These requests must be submitted 21 calendar days before the next regularly scheduled meeting.

(B) *Frequency of meetings.* The board shall meet at least biannually and may meet at other times as the chair deems necessary. All meetings shall be conducted in accordance with the Texas Open Meetings Act.

(C) Attendance. If a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during the calendar year, unless the absence is excused by majority vote of the board, a potential ground for removal from the board exists. The chair shall notify the governor that potential ground for removal exists.

(D) Rules of parliamentary procedure. All official decisions made by the board shall be made according to parliamentary procedures as set forth in the latest edition of Robert's Rules of Order.

(E) Transaction of official business. The board may transact official business only during a legally constituted meeting with a quorum present. Five members of the board constitute a quorum. The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(F) Minutes. The minutes of a board meeting are official only when affixed with the original signatures of the chair and the executive secretary or the executive secretary's designee.

(i) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments or corrections prior to approval by the board.

(ii) The official minutes of the board meetings shall be kept in the office of the executive secretary or the executive director's designee.

(b) Petition for the adoption of a rule.

(1) Purpose. The purpose of this subsection is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(2) Submission of the petition.

(A) Any person may petition the board to adopt a rule.

(B) The petition shall:

(i) be in writing;

(ii) state petitioner's name, address, and telephone number; and

(iii) contain the following information:

(I) a brief explanation of and justification for the proposed rule;

(II) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(III) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(IV) the public benefit anticipated as a result of adopting the proposed rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(C) The petition shall be filed with the board office.

(D) The executive secretary or the executive secretary's designee may determine that the petition does not contain the information described in subparagraph (B) of this paragraph.

(3) Consideration and disposition of the petition. All initial petitions for the adoption of a rule shall be presented to and resolved by the board.

(c) Executive secretary. The executive secretary of the executive secretary's designee:

(1) keep the minutes and proceedings of the board and shall be custodian of the files and records unless another custodian is designated by the board;

(2) shall exercise general supervision over persons employed in the administration of the Act;

(3) shall be responsible for the investigation of complaints and for the presentation of formal complaints to the complaints committee;

(4) shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department;

(5) shall be responsible for assembling and evaluating materials submitted by applicants for licensure. Determinations made by the executive secretary or the executive secretary's designee that propose denial of licensure are subject to the approval of the appropriate committee of the board or the committee which shall make the final decision on the eligibility of the applicants; and

(6) may serve as the administrator of licensure examinations.

(d) Official records. The rules of procedure for inspection and duplication of public records contained in the Texas Open Records Act shall apply to requests received by the board.

(e) Impartiality and nondiscrimination. The board shall make no decision in the discharge of its statutory authority based on to any person's race, religion, color, gender, disability, national origin, or age. An individual must be a minimum of 18 years old to apply for licensure. Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee shall so declare this to the committee and shall not participate in any board proceedings involving that applicant or licensee.

(f) Disabled applicants. Applicants with disabilities shall inform the executive secretary or the executive secretary's designee 30 days in advance of any special accommodations needed.

(g) License certificate.

(1) The board shall prepare and provide to each licensee a license certificate which contains the licensee's name and license number.

(2) Any license certificate or renewal card issued by the board shall remain the property of the board and must be surrendered to the board on demand.

(h) Licensee roster.

(1) Each year the board shall publish a roster of licensees.

(2) The roster of licensees shall include, but not be limited to, the name, mailing address, current facility address (if applicable), and telephone number of current licensees.

(3) The board shall make available a copy of the roster available to each current licensee(s) and provide upon request, copies to other state agencies and the general public.

(i) Fees.

(1) All fees are non-refundable.

(2) Remittance submitted to the board in payment of fees may be in the form of a cashier's check or money order only.

(3) The board has established the following fees for licenses, license renewals, and examinations and all other administrative fees under the Act. The schedule of fees shall be as follows:

(A) application fee—\$100;

(B) Texas State Standards Examination—\$150;

(C) National Association of Boards of Examiners of Nursing Home Administrators, Inc. Examination fee—\$125;

(D) National Association of Boards of Examiners of Nursing Home Administrators, Inc. Re-examination fee—\$125;

(E) licensure fee—\$250 (for initial license);

(F) renewal fee—\$250 (biennially);

(G) formal inactive status fee—\$250;

(H) late renewal fee—\$250 plus half of the examination fee as set forth in subparagraph (B) of this paragraph if over 90 days cost of renewal will be the equivalent of the application fee and the examination fee;

(I) late renewal fee (over 90 days)—\$250 and a fee that is equal to the examination fee(s) for the license;

(J) duplicate license fee—\$25;

(K) provisional license fee—\$250; and

(L) exam retest fee—\$50 per examination.

(4) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus.

§18.3. Application Procedures.

(a) Purpose. The purpose of this section is to set out the procedures for application to be a licensed nursing facility administrator.

(b) General.

(1) An applicant must submit all required information and documentation of credentials on official board forms.

(2) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the completed application form(s) and both the completed application form(s) and fee must be received at least 30 days prior to the date that the applicant wishes to take an examination.

(3) An application will become void one-year after the receipt, if the applicant has not completed all the requirements for licensure.

(4) The board is not responsible for lost, misdirected, or undelivered correspondence.

(c) Required application materials. Documentation listed in paragraph (1)(C)-(F) of subsection must be received in the agency office no later than five working days before the next regularly scheduled examination. This documentation may be submitted with the application and the application fee.

(1) Application. The application shall be sworn, filled out completely, and contain the following:

(A) specific information regarding personal data, employment history, licensure in other states;

(B) a statement that the applicant has read the Act and board rules and agrees to abide by them;

(C) evidence of completion of the 200-clock hour nursing facility administrator's course or its equivalent;

(D) applicant's disclosure regarding the internship completed through an approved school or through the auspices of a board-certified preceptor;

(E) a "Texas Criminal Conviction" report with accompanying fingerprint card; and

(F) official college transcripts evidencing the minimum education requirements of a Bachelor's degree.

(2) Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted.

(3) Sworn statement. The applicant shall swear to the information provided in the application, in the space provided before a public notary.

§18.4. Criteria for Determining Fitness of Applicants for Examination and Licensure.

(a) Purpose. The purpose of this section is to set forth the criteria by which the board will determine the qualifications of an applicant for approval for examination and licensure.

(b) Materials considered in determining the qualifications of applicants. In determining the fitness of applicants for examination and licensure, the board shall consider each of the following:

(1) a completed application;

(2) documentation from other states evidencing "out of state" licensure and any disciplinary action;

(3) transcripts or findings from official court, hearing, or investigative proceedings if applicable; and

(4) any other information which the board considers pertinent to determining the fitness of an applicant.

§18.5. Academic Regulations for Examination and Licensure.

(a) Purpose. The purpose of this section is to set out the academic requirements for examination and licensure as a nursing facility administrator.

(b) General.

(1) The minimum of a Bachelor's degree is required from an accredited college approved by an accrediting association recognized by the State of Texas Higher Education Coordinating Board.

(2) The required Bachelor's degree must be either:

(A) a Bachelor's degree or graduate degree in gerontology, long term care, or health care administration with coursework that includes all of the National Association of Boards of Examiners of Nursing Home Administrators, Inc. domains as follows:

(i) residents rights;

(ii) resident care management;

(iii) personnel management;

(iv) financial management;

(v) environmental management;

(vi) regulatory management; and

(vii) organizational management; or

(B) a Bachelor's degree or graduate degree in any subject, plus additional coursework equivalent to the 200-clock hour, board-approved nursing facility administrator's course.

(3) A minimum of 1,000 hours of internship must be served in a nursing facility licensed for 60-beds or more regardless of the degree obtained.

(4) Degrees and coursework received at foreign universities shall be acceptable only if such coursework is counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. If degrees or coursework cannot be documented because the foreign university refuses to issue a transcript or other evidence including degrees or coursework based on approved documentation which evidence the minimum educational requirement presented by the foreign applicant, then the applicant forfeits the original application and must submit a new application with the proper transcripts or transcript evaluation.

(c) Licensure examination requirements.

(1) Frequency. The Texas Board of Nursing Facility Administrators will give the Texas State Standards Examination and the National Board of Examiners for Nursing Facility Administrators, Inc., Examination four times a year as follows:

- (A) January;
- (B) April;
- (C) July; and
- (D) October.

(2) Notification for eligibility for examinations. An applicant will be notified of eligibility for examination.

(3) Examination. A person may apply to take the examination after he or she has:

(A) submitted the necessary forms, fees, and application in accordance with §18.3 of this title (relating to Application Procedures); and

(B) submitted the supporting documents evidencing completion of the required internship, coursework, and/or approved degree, as specified under this section.

§18.6. Administrators-in-Training.

(a) Purpose. The purpose of this section is to set out the internship and/or practicum(s) requirements for examination and licensure as a nursing facility administrator.

(b) General. Internships will be a minimum of six months in length and 1,000 hours served under the auspices of a board-approved preceptor or through a board-approved college program.

(1) An applicant may train for a minimum of one hour per day, maximum 40 hours per week.

(2) The internship must be conducted in a minimum 60-bed or larger licensed facility.

(3) An Administrator-in-Training (AIT) may not act or sign as the administrator in any way.

(c) Preceptor qualifications and responsibilities.

(1) All applicants for preceptor approval must have an active license in good standing.

(2) An administrator desiring to obtain a preceptor approval certificate must have at least five year's experience as a nursing facility administrator, with the two most recent years in Texas.

(3) A preceptor certificate will be issued to a qualified nursing facility administrator by the board upon completion of the board approved preceptor seminar. This certificate will be valid for two years from issuance date.

(4) The procedure for denial of preceptor status is as follows.

(A) The board may refuse to renew preceptor certificates or to approve preceptors for training AIT's if the preceptor has failed to provide proper training regarding former AIT's previously assigned to the preceptor.

(B) Disciplinary action taken by the board against an administrator may be grounds for refusal to grant a preceptor's certificate.

(5) Special permission from the board will be required before the supervision and training of more than two AIT's by one preceptor.

(6) A preceptor shall be responsible for the training of the AIT. The preceptor must ensure that all training provided is in compliance with this chapter, and the Act.

(7) The certified preceptor must submit a written notification of termination or completion of internship to the board within ten days of when training has ceased. The board notification of termination or completion shall include:

(A) the name, license number, signature of the preceptor, and the name of the AIT;

(B) the reason for termination;

(C) the date of termination of training; and

(D) a statement indicating whether the preceptor and the AIT have complied with the requirements of this section, in accordance with §18.3(c) of this title (relating to Application Procedures).

§18.7. Successful Completion of Examination.

(a) Examination notice. The board shall send an examination notice to each applicant and Administrator-in-Training who has satisfactorily fulfilled all requirements for licensure.

(b) Issuance of license. Upon successfully passing the required exam(s), and after receiving the required licensure fee, the board shall issue a license which is effective for two years from the postmark date, if legible, or the date the board receives the fee with the required form(s).

(c) Temporary license. Temporary licenses will not be issued.

(d) Duplicate license. The board will replace a lost, damaged, or destroyed license certificate upon written request from the licensed nursing facility administrator and payment of the duplicate fee. Request for duplicate licenses must be made on agency form and notarized accordingly.

§18.8. Provisional License by Endorsement.

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a nursing facility administrator by another state or other jurisdiction whose requirements for licensure or registration, are substantially equivalent to the requirements set out in the Act and in this chapter; and

(2) has successfully passed the National Association of Boards of Examiners for Nursing Home Administrators, Inc., relating

to nursing facility administration or a comparable examination criteria approved by the board; and

(3) is sponsored by a licensed nursing facility administrator in Texas with whom the provisional license holder will practice under this chapter.

(b) The board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if the provisional license holder passes the Texas State Standards Examination required by §18.7 of this title (relating to Successful Completion of Examination).

(d) The board shall complete the processing of a provisional license holder's application for licensure within 180 days after the provisional license is issued. The board may extend the 180-day deadline pending receipt of examination results.

(e) The expiration date of a provisional license will be ascertained 180 days from the issuance date, and may be extended with approval of the board.

§18.9. License Renewal and Inactive Status.

(a) Purpose. The purpose of this section is to set out rules governing licensure renewal and inactive status of a licensed nursing facility administrator.

(b) General.

(1) A licensed administrator must renew his or her license every two years (biennially).

(2) Each licensed administrator is responsible for renewing licensure and paying the renewal fee as set out in §18.2(i) of this title (relating to the Board) on or before the expiration date.

(3) No administrator shall be exempt from paying the late renewal fee after the expiration date of the license.

(4) The board shall deny the renewal of a license of an administrator who is in violation of the Act or this chapter at the time of the application for renewal.

(5) A licensed administrator must have fulfilled the continuing education requirements prescribed by §18.10 of this title (relating to Continuing Education Requirements) in order to renew licensure.

(6) The deadlines established for renewals, and late renewal fees in this section are based on the postmark date of the documentation submitted by the licensee, if legible. If not, the "date received" by this agency shall be the date considered in determining whether deadlines have been met.

(7) A licensed administrator whose license is not renewed due to failure to meet all requirements for licensure renewal shall return his or her license certificate to the board and shall not misrepresent himself or herself as a licensed administrator in any manner.

(c) License renewal.

(1) At least 30 days prior to the expiration of a regular license, the board will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and late fees, and the number of hours needed to complete any continuing education hours.

(2) The license renewal form shall require the licensee to provide current information, such as, continuing education completed, and the current mailing address and daytime phone number of the licensee.

(3) The board shall not consider a license to be renewed until it has received the completed renewal form, required fee, and documentation of applicable and sufficient continuing education.

(4) The biennial renewal date of a license shall be the last day of the licensee's birth month.

(5) The board shall issue a renewal card to a licensee who has met all the requirements for renewal before license expiration.

(6) The license of a person who makes a timely request for his or her license renewal does not expire until the application for renewal is finally determined by the board. In case the application is denied or the terms of the new license are limited, the prior license remains valid until the last day for seeking review of the board's order or a later date fixed by the order.

(7) The board will not process the licensure renewal of a licensee who is a party to formal license disciplinary proceedings, until such proceedings has been concluded. A disciplinary proceeding commences when the notice described in §18.11(b) of this title (relating to Adverse Licensure Actions) is mailed by the board.

(A) A licensee whose license is not revoked or suspended as a result of disciplinary proceedings shall be renewed provided that all other requirements are met.

(B) In the case of delay in the licensure renewal process because of formal disciplinary proceedings, late renewal penalty fees shall not apply.

(8) The board is not responsible for lost, misdirected, or undelivered correspondence if sent to the last address reported to board.

(9) The board shall deny renewal if required by the Education Code, §57.491, concerning defaults on guaranteed student loans.

(d) Late renewal.

(1) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the renewal fee plus one-half the examination fee set out in §18.2(i) of this title. If a license has been expired for 90 days but less than one year, renewal of the license may be accomplished by paying to the board the renewal fee and a fee that is equal to the examination fee for licensure.

(2) A person, whose license was not renewed within one year of the expiration date, may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license set out in this chapter.

(3) The board may renew without re-examination an expired license of a person who was licensed in this state, then moved to another state, and is currently licensed and has been in practice in the other state for two years preceding application for renewal. That person must pay to the board a fee that is equal to the examination fee for the license.

(e) Inactive status. If a licensee wishes to be placed on inactive status, the request must be submitted on the required agency form on or before the expiration date. A licensee may only request to be placed on inactive status for two renewal periods. A licensee

must reactivate his or her license on or before the expiration date, and must:

(1) pay the renewal fee as stated in §18.2(h) of this title (relating to the Board);

(2) complete required continuing education;

(3) take and pass the Texas State Standards Exam; and

(4) renew within the current inactive license period.

(f) Surrender of license.

(1) Surrender of license. A licensee may at any time voluntarily offer to surrender his or her license for any reason.

(2) Acceptance by the board.

(A) The board shall decide whether to formally accept the voluntary surrender of a license.

(B) Surrender of a license without the acceptance of the board, or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under this Act or any other statute.

(3) Formal disciplinary action. When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Act or this chapter, and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(4) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license within five years after the date of the acceptance of the surrender of the license in accordance with the Act and this chapter.

§18.10. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements for the renewal of licensure which a licensed nursing facility administrator must complete biennially. These requirements are intended to maintain and improve the quality of professional services in nursing facility administration provided to the resident and public and keep the licensed nursing facility administrator knowledgeable of current research, techniques, and practice and to provide other resources which will improve skill and competence in nursing facility administration. Continuing education hours must be relevant to nursing facility administration. All licensees are required to complete during each licensure period continuing education of an amount and type designated and approved by the board.

(b) Required continuing education hours.

(1) A licensee shall complete a minimum of 40 clock hours of continuing education every two years in the following categories:

(A) six hours in regulatory changes;

(B) six hours in management theory;

(C) six hours in ethics;

(D) six additional hours in any of the approved courses listed in subparagraphs (A)-(C) of this paragraph;

(E) 16 hours (maximum) of alternative education offerings in any related field or approved category; these include college credit, precepting of an Administrator-in-Training, audio/visual offerings, home study, and other approved continuing education courses; and

(F) no more than one-half of the required continuing education requirements may be obtained from the precepting of an Administrator-in-Training (AIT).

(2) Deadlines. Continuing education requirements for renewal shall begin on the first day of a licensee's renewal period and end on the last day of the licensee's renewal period. (c) Hour requirements for continuing education. Both half-hour (30 minutes) and one-hour (60 minutes) increments of attendance and participation in an approved continuing education experience are acceptable. Continuing education experiences acceptable to the board are set forth in subsection (e) of this section.

(d) Types of acceptable continuing education. Continuing education undertaken by a licensee shall be acceptable if the experience falls in one or more of the following categories:

(1) with prior approval, participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which employ didactic and experiential methods to increase skill and competence in nursing facility administration by persons who hold licensure granted by the board or an equivalent nursing facility administrator board in another state;

(2) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of licensed nursing facility administration and are conducted by persons qualified within their respective professions;

(3) attendance at seminars and/or workshops which have received prior approval from the board. Credit will be awarded as approved by the board;

(4) completion of the training of an AIT. Credit will be awarded only to the preceptor of record;

(5) instruction of courses in subject areas outlined in subsection (b) of this section in an institution of higher education. Any person who instructs approved seminars and/or workshop or instructs in programs given by the board shall receive the same credit as participants in the program. Credit will be given only one time per renewal period for same subject matter; and

(6) completion of academic courses in areas supporting development of skill and competence in nursing facility administration at an accredited college or university.

(e) Phase in period. Nursing facility administrators shall be permitted license renewal until December 1996 by accomplishing a minimum of 24 contact hours of which six shall be in Texas regulatory changes, and six shall be in management theory, and 12 hours shall be in any approved subject relating to nursing home administration.

(f) Approval of programs. Criteria for approval of programs is based on:

(1) relevance of the subject matter to increase or support the development of skill and competence in nursing facility administration or in areas of study or disciplines related to nursing facility administration;

(2) objectives of specific information and skills to be learned;

(3) subject matter, educational methods, materials and facilities utilized including the frequency and duration of the sessions and the adequacy to implement learner objectives; and

(4) evidence of attendance of approved programs will be in accordance with §18.9 of this title (relating to License Renewal and Inactive Status).

(g) Determination of clock hour credits. The board shall credit continuing education. On a one-for-one basis with one clock hour credit for each clock-hour spent in an approved continuing education activity.

(h) Submittal of continuing education.

(1) Continuing education units of no less 40 hours must be reported by the licensee on or before the date of the expiration of the license, or within the 90-day grace period. These hours shall be reported on forms provided by the board. These individual lists will be matched against sign-in sheets submitted by the board approved continuing education sponsors. The board shall conduct a random audit requesting documentation of continuing education. Individual continuing education certificates of attendance shall not be submitted unless the licensee is requested to do so by the board. Failure to provide evidence of completion of continuing education by a licensee is subject to non-renewal and grounds for disciplinary action.

(2) In the event a nursing facility administrator moves out of state, the license may be maintained through submission of proof of required continuing education and payment of the required fee(s).

(i) Records. Continuing education records shall be kept as follows.

(1) Provider.

(A) Records of programs shall be kept by the approved sponsor for a minimum of five years from the date of completion.

(B) Records shall include target audience, program planning materials, content, objectives, outline of instructor qualifications, teaching methods and materials, evaluation tools and summary, alphabetical listing of participants, Texas nursing facility license number.

(C) The provider shall furnish each participant a record of attendance specifying the provider, title, date, location of the program, number of contact hours, and organization granting approval, if applicable. This record shall be kept by the nursing facility administrator for a minimum of four years from the date of completion.

(2) Licensee. The nursing facility administrator licensee shall retain records of continuing education hours earned for a minimum of four years from the date of completion.

§18.15. Default Orders.

(a) If a right to a hearing under §18.17 of this title (relating to Formal Hearing Procedures) is waived, the board shall enter an order taking disciplinary action to the same or lesser extent as set out in the written notice to the licensee.

(b) The licensee and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary. All or part of the documents in the files of the board may be considered by the board as prima facie evidence of the commission of acts or violations alleged against the licensee.

(c) Upon an affirmative majority vote, the board shall enter an order imposing appropriate action.

§18.16. Criteria for Licensing of Persons with Criminal Backgrounds.

(a) Purpose. The purpose of this section is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses as administrators.

(b) Criminal conviction. The board shall consider a conviction of a nursing facility administrator for a felony or misdemeanor involving moral turpitude as possible grounds for the suspension or revocation of the nursing facility administrator's license and shall review the conviction.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving or renewing a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a nursing facility administrator and if the crime involves moral turpitude.

(2) In considering whether a criminal conviction directly relates to the duties and responsibilities of a nursing facility administrator, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of a nursing facility administration. If the felonies or misdemeanors are violations of federal law, law of another state, or law of another nation and are similar to those listed in clauses (i) and (ii) of this subparagraph then they are also possible grounds for suspending, probating, failing to renew, reprimand, or requiring additional continuing education. The following felonies and misdemeanors relate to the license of a nursing facility administrator because these criminal offenses indicate a possible inability or a tendency to be unable to perform adequately and responsibly as a nursing facility administrator:

(i) the misdemeanor of knowingly or intentionally acting as a nursing facility administrator without a license; and

(ii) a misdemeanor and/or a felony offense under the following chapters of the Texas Penal Code:

(I) Title 5, which relates to offenses against the person similar to the types of crimes listed in subclauses (I)-(V) of this clause, they shall also be considered to relate to the duties and responsibilities of a nursing facility administrator;

(II) Title 7, which relates to offenses against property;

(III) Title 9, which relates to offenses against public order and decency;

(IV) Title 10, which relates to offenses against public health, safety, and morals; and

(V) Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses in subclauses (I)-(IV) of this clause.

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person had previously been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a nursing facility administrator. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i) and (ii) of this subsection are not inclusive in that the board may consider other particular crimes.

This 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 July 21, 1998.

TRD-9811475

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765



Part XX. Texas Workforce Commission

Chapter 815. Unemployment Insurance

40 TAC §815.8

The Texas Workforce Commission (Commission) proposes amendments to §815.8(a)(8), concerning the revocation of written authority to conduct business with the Commission on behalf of an employer.

The purpose of the amendments is to allow a third party to revoke the written authority to conduct business with the Commission on behalf of an employer. Until the amendments are approved, only the employer can revoke the written authority. The proposed amendments provide that once an employer has given a third party written authority to conduct business with the Commission on their behalf, either the employer or the third party may revoke the written authority.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments will be in effect the following statements will apply:

There will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule;

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the amendments;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendments;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the amendments;

There are no foreseeable implications relating to costs or revenue of the state or local government as a result of enforcing or administering the amendments; and

The probable economic costs to persons required to comply with the rule amendments are estimated to be \$2.50 per revocation form applied. However, the savings derived from the amendments to the rule will offset these costs.

Randy Townsend has also determined the following. There is no anticipated adverse impact on employer small businesses as a result of enforcing or administering the amendments to §815.8(a)(8). The amendments to §815.8(a)(8) do not place

any additional requirements on employer small businesses. The costs of compliance with the amendments to §815.8(a)(8) for employer small businesses are none. The costs of compliance with the amendments to §815.8(a)(8) for service agent small businesses are estimated at \$2.50 per revocation based on approximately \$10.00 per hour of labor and include the cost of completing and mailing the forms to the Commission. The costs of compliance for service agent small businesses and the costs of compliance for the largest service agent businesses affected by the amendments to §815.8(a)(8) are the same. The Commission cannot legally reduce the costs for small businesses. However, the Commission will provide employers and third parties with standard revocation forms at no cost to facilitate easier revocation.

Avis M. O'Reilly, Tax Department, Status Program Administrator has determined that for each year of the first five years that the amendments will be in effect, the public benefits expected as a result of adoption of the proposed amendments to §815.8(a)(8) are that the rule change allows a third party with written authority to unilaterally revoke their authorization. Until now only the employer could revoke the authorization. The previous revocation requirement placed a burden on both the employer and the third party by requiring coordination between the parties. The amended rule will allow either party to revoke the authorization. This will save time and effort for both the employer and the third party.

All official comments submitted to Ms. O'Reilly will be considered before the final rule amendments are adopted. Comments on the proposed amendments may be submitted to Avis M. O'Reilly, Tax Department, Status Program Administrator, Texas Workforce Commission, 101 East 15th Street, Room 570, Austin, Texas 78778-0001, 512/463-2712. Comments may also be submitted via fax to Avis M. O'Reilly at (512) 463-9111 or e-mail at Avis.Oreilly@twc.state.tx.us.

The amendments to §815.8(a)(8) are proposed under Texas Labor Code, §301.061, which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of the Act.

The proposed amendments to §815.8(a)(8) affect Texas Labor Code, Titles 2 and 4, particularly Chapter 201 *et. seq.*

§815.8. Signatures on Reports and Forms.

(a) A report or form required by the commission shall, if signature is called for by the report or form or instructions relating thereto, be signed by:

(1)-(7) (No change.)

(8) any person who is authorized in writing [se] to sign for each individual or employing unit.

(A) Such written authority shall be filed with the commission, shall be revocable by either party, and shall be in terms which explicitly authorize such attorney or agent to transact such business as between the grantor of said power and the commission. Such written authority shall be filed in a form prescribed by the commission. ~~(It may be filed on a form provided by the commission.)~~

(B) (No change.)

(C) Such written authority [power of attorney] shall be in full force and effect until such time as it is revoked in a form prescribed by the commission [by an instrument of like dignity filed with the commission].

(D) The commission may reject any written authority that does not conform with this section.

(b) (No change.)

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

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

TRD-9810810

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 23, 1998

For further information, please call: (512) 463-8812



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

Subchapter R. Management of Whole Used or Scrap Tires

30 TAC §§330.825–330.830

The Texas Natural Resource Conservation Commission (commission) has withdrawn from consideration for permanent adoption the proposed repeal of §§330.825-330.830 which appeared in the January 2, 1998, issue of the *Texas Register* (23 TexReg 70).

Due to an inadvertent filing error, §§330.825-330.830 were published as repealed in the July 3, 1998, issue of the *Texas Register* (23 TexReg 7003). However, the commission did not adopt the repeal of these sections, but instead withdrew them.

Filed with the Office of the Secretary of State on July 7, 1998.

TRD-9810708

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: July 7, 1998

Proposal publication date: January 2, 1998

For further information, please call: (512) 239-1970



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 81. Elections

Subchapter D. Voting Systems Certification

1 TAC §81.60

The Office of the Secretary of State, Elections Division, adopts an amendment to §81.60, concerning voting system certification procedures with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 *TexReg* 5543).

The amendment is being adopted to require applicants for certification or modification of a voting system in Texas to include a summary report from a Nationally Recognized Test Laboratory (NRTL) declaring that the item meets the Federal Election Commission's minimum voting system requirements. The proposed amendment has been modified to require the NRTL to have been certified by the National Association of State Election Directors (NASED).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Code, and under the Code, Chapter 122, §122.001(c), which authorizes the Secretary of State to prescribe additional standards for voting systems.

The Code, Chapter 122, is affected by this proposed amendment.

§81.60. *Voting System Certification Procedures.*

In addition to the procedures prescribed by the Texas Election Code, Chapter 1322, compliance with the following procedures is required for certification of a voting system.

(1) (No change.)

(2) The applicant must deliver four copies of all relevant software and source codes, and six copies of any user and/or reference manuals, and six copies of the summary report(s) for all examinations conducted by a NRTL and certified by the NASED, if applicable, declaring that the item meets the Federal Election Commission's minimum voting system requirements to the Office of the Secretary of State no later than 45 days prior to the examination.

(3)-(11) (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 July 7, 1998.

TRD-9810738

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: July 27, 1998

Proposal publication date: May 29, 1998

For further information, please call: (512) 463-5650



1 TAC §81.61

The Office of the Secretary of State, Elections Division, adopts a new rule, §81.61, concerning voting system certification procedures with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 *TexReg* 5543).

The text as originally published has been amended to add a requirement that the laboratory testing a vendor's system have been certified by the National Association of State Election Directors (NASED).

The new rule is adopted to require an electronic voting system, or modifications to a previously certified system, to have been certified by a nationally recognized test laboratory and to meet or exceed the minimum FEC voting system requirements.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Code, and under the Code, Chapter 122, §122.001(c), which authorizes the Secretary of State to prescribe additional standards for voting systems.

The Code, Chapter 122, §122.001, is affected by this rule.

§81.61. *Condition for Approval of Electronic Voting Systems.*

For any voting machine, voting device, voting tabulation device and any software used for each, including the programs and procedures for vote tabulation and testing, or any modification to any of the above, to be certified for use in Texas elections, the system shall have been certified, if applicable, by means of qualification testing by a Nationally Recognized Test Laboratory (NRTL) and shall meet or exceed the minimum requirements set forth in the *Performance and Test Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems*, or in any successor

voluntary standard document developed and promulgated by the Federal Election Commission. The NRTL must have been approved for testing of voting systems by the NASED. This section applies only to systems and modifications to previously certified systems submitted after the effective date of this rule.

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 July 7, 1998.

TRD-9810737

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: July 27, 1998

Proposal publication date: May 29, 1998

For further information, please call: (512) 463-5650



TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter E. Creation of Eradication Zones

4 TAC §3.114

The Texas Department of Agriculture (the department) adopts new §3.114, concerning the creation of a nonstatutory boll weevil eradication zone, without changes to the proposal published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5867). The new section is adopted to establish a new non-statutory boll weevil eradication zone consisting of counties not currently located in a statutory zone created under the Texas Agriculture Code, Chapter 74, Subchapter D, in order to allow cotton producers in the proposed area an opportunity to establish a more manageable, efficient eradication program that better meets the local needs of producers. New §3.114 establishes the Southern Blacklands Boll Weevil Eradication Zone. A grower referendum will be conducted to determine whether or not a boll weevil eradication program and assessment will be approved for that zone.

One comment was received from the Blackland Cotton and Grain Producers Association generally in support of the proposal. A prior proposal for the establishment of a Southeastern Blacklands zone was withdrawn by the department because, based upon comment received on that proposal from various individuals and organizations including the Commissioner's Blacklands Area Interim Advisory Committee, the South Texas Cotton and Grain Association and the Texas Boll Weevil Eradication Foundation, the department determined that the boundaries in the original proposal should be modified to those proposed for the Southern Blacklands zone. Comments received on the original proposal also supported the need for the establishment of a zone in the area for boll weevil control.

The department agrees with the comments received in support of the designation of the proposed zone and believes that enough grower support and justification has been demonstrated to adopt the designation of the Southern Blacklands Zone and provide the opportunity for growers to express their support

by passing or defeating a referendum to establish a zone eradication program.

The new section is adopted under the Texas Agriculture Code, §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone.

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 July 9, 1998.

TRD-9810900

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: July 29, 1998

Proposal publication date: June 5, 1998

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



Part III. Office of the Texas State Chemist/ Texas Feed and Fertilizer Control Service

Chapter 65. Commercial Fertilizer Rules

Subchapter B. Permitting and Registration

4 TAC §65.11

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts an amendment to §65.11, concerning Application for Registration without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5868) and will not be republished. The amendment to the rule is to become effective September 1, 1998.

The rule is being amended to ensure compliance with §76.041(f) of the Texas Pesticide Law. That paragraph requires appropriate certification from the Texas Department of Agriculture that the pesticide is approved for use.

The following comments were received concerning the proposed section. Following each comment is the Service's response.

Comment: Respondents claimed that the rule burdens manufacturers of packaged specialty fertilizer/pesticide products that have been registered by the USEPA by unnecessarily delaying the approval of those products. The request was made that the products that are registered with the EPA and display an EPA Registration Number be exempt.

Response: Registration with the EPA is not recognized by §76.041 as an exemption from the Texas Department of Agriculture's requirement to register. The Service has no authority to grant such exemption.

The following 10 specialty fertilizer firms co-signed a common letter expressing opposition to the amendment of the rule: A. H. Hoffman, Central Garden & Pet, J. R. Peters, Martin Resources, Pursell Industries, Scott-Miracle Gro Products, The Andersons, The Espoma Company, The Scotts Company, United Industries Corp.

The Texas Ag Industries Association and Frit Industries commented in favor of the rule.

The amendment is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter C, §63.034, is affected by the amendment to the rule.

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 July 13, 1998.

TRD-9811012

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (512) 845-1121



4 TAC §65.13

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts new §65.13, concerning Waste Products Distributed as Fertilizers without changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5868). The new rule is to become effective September 1, 1998.

This new section is necessary to ensure that sewage, sludge and septage used as fertilizers meet the same standards as other commercial fertilizers and can be safely used. It defines requirements for registration of sewage, sludge and septage under 4 TAC 63 of the Texas Fertilizer Law.

The following comments were received concerning the proposed section. Following each comment is the Service's response.

Comment: One respondent asked why sludges, sewage, septage and mixed fertilizers containing the same (§65.13) are treated differently from chemical fertilizers with respect to their non-nutritive elements (§65.17).

Response: The respondent has confused two different actions: (1) what the registrant must supply on registration (§65.13) and (2) the general requirements any fertilizer must meet when distributed (§65.17). There is no difference in standards for distribution of commercial fertilizers. The Service requires additional information on registration of sludges, sewage, septage and mixed fertilizers containing them because of possible adverse effects on the biosphere from inappropriately conditioned products.

Comment: A second respondent opposed §65.13(a) as being too broad and consequently effectively prohibits the use of materials that have long been used as fertilizer materials.

Response: The Service disagrees. There is no prohibition against the use of or distribution of waste or waste-derived materials; what is required is registration before distribution of the product.

The following 10 specialty fertilizer firms – A. H. Hoffman, Central Garden & Pet, J. R. Peters, Martin Resources, Pursell Industries, Scott-Miracle Gro Products, The Andersons, The Espoma Company, The Scotts Company, United Industries Corp. – in a common letter and Stoller Industries opposed one or more of the subsections.

The Texas Ag Industries Association and Frit Industries favored the rule.

The amendment is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter H, §63.142 and §63.143 are affected by the amendment to the rule.

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 July 13, 1998.

TRD-9811013

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (512) 845-1121



Subchapter C. Labeling

4 TAC §65.17

The Office of the Texas State Chemist, Texas Feed and Fertilizer Control Service, adopts new §65.17, concerning Labeling - General Requirements with changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5869). The new section requires all fertilizers to make available information about components of the fertilizers and about appropriate use and to meet certain standards for non-nutritive and nutritive elements.

The rule serves to set standards for various non-nutritive components of fertilizer and to make available to the consumer who wishes it information about the components of the formulation as well as ways to use the product in conformance with the standards.

Change: The Service notes in its final review of all comments that the various amendments to the rule have had an unintended effect on §65.17(a)(2). Without amendment to this rule manufacturers would be forced to guarantee plant nutrients contained in the ingredients (components) list whether they wish to do so or not. The Service has no intention of imposing such a requirement. Accordingly, §65.17(a)(2) is amended to read: "Plant nutrients other than nitrogen, available phosphate and potassium, when mentioned in any form or manner on the label of a fertilizer product other than in the list of ingredients shall be guaranteed."

Editorial changes were made in §65.17 to change phosphorus and available phosphorus to available phosphate to conform to new terminology of the Association of American Plant Food

Control Officials (AAPFCO). The changes were in (a)(1), (a)(2), (2)(A) and (2)(B)

The following comments were received concerning the proposed new rule. Following each comment is the Service's response.

Comment: Respondents claimed that the labeling prescribed in 4 TAC §65.17(b)(1) violates the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which prohibits disclosure of inert ingredients of pesticides.

Response: There is no violation of FIFRA. The rule states that the label shall list all "components" of the fertilizer, not all the "components of the components" of the fertilizer. Different terms could have been used, e.g., constituent, raw material, ingredient, which for the purposes of the rule are synonymous. There is no intent and the rule should not be read as saying that a label describing an ammonium sulfate nitrate/calcium carbonate mixture must list the raw materials which originally composed the ammonium sulfate, nitrate or limestone. The label of a fertilizer containing the aforementioned components and a pesticide with a trade name of XXXX would read, assuming the pesticide has proper EPA and Texas Department of Agriculture registrations, ammonium sulfate nitrate, pulverized limestone, XXXX. Note, there is no requirement to disclose proprietary inert ingredients which compose the pesticide.

Comment: Respondents argued that the State has underestimated the cost of new labeling of specialty fertilizer as required in 4 TAC §65.17(b) because it has allowed only one fertilizer season, i.e., fall-spring 1998-1999 to utilize existing packaging and because of trans-shipment of non-conforming labeling into the state from distribution centers located outside of Texas. The comments also suggest that the Service would face a costly compliance problem caused by old packaging remaining in trade.

Response: The Service recognizes that there are costs to both the Service and the manufacturer, but those costs must be balanced against the need to make the change in a reasonable time. Manufacturers have had ample notice; they have known since August 1997 that changes would be forthcoming. Manufacturers are complying with the State of Washington's requirements which allow only three months for bags bearing new or overstickered labels to appear in the marketplace and which require that all old label products be removed by January 1, 1999. Thus, while a year to clear the marketplace of old labels seems reasonable, the Service will not require old label product to be out of the marketplace until December 31, 1999. The Service disagrees that the new rule will require it to undertake a costly program of compliance; it believes present marketplace surveillance is adequate. (In addition, the Service is prepared to accept bags labeled according to the presently existing July 1, 1998 Washington State Law and rules, but if those products are distributed in Texas, they must meet the Washington standards both for availability of information and levels of trace metals or they will be deemed misbranded (§63.142 of the Fertilizer Law).

Comment: The Service was asked to wait until the August meeting of the Association of American Plant Food Control Officials (AAPFCO) to ensure that state labeling regulations are uniform.

Response: The rules meet the specifications adopted by the AAPFCO Board at its mid-year meeting with the exception of

the levels of trace metals allowed. It is the industry who wished adoption of a non-AAPFCO recommended level of non-nutritive metals despite the Service's desire to maintain uniformity with AAPFCO; thus, this is a matter which needs to be resolved by the industry.

Comment: Although the adoption of cumulative pollutant loading rates from the EPA sludge/sewage rules rather than the so-called Canadian standard as adopted by Washington State were favored by all, some questioned linkage between these rates (§65.24(3)(B) Table 2) and the allowable concentration of those metals when conforming to §65.17(g), Table 1.

Response: The industry expressed its strong preference for the cumulative annual pollutant loading rates, but did not want, in all cases, to label its product with application rates. Without application rates, the Service cannot determine, simply by testing, whether a product meets the cumulative annual loading rate. Recognizing this need, the rule offers the distributor the option of foregoing printing an application rate if the product meets the standard in Table 1 (§65.17(g)). Table 1 uses as its basis 40 CFR §503.13(a)(2) as does Table 2.

Comment: A number of respondents believed the allowable levels of molybdenum given in the Tables are inconsistent.

Response: They are correct; the molybdenum level in Table 2 (§65.24(3)(B)) is the so-called Canadian standard rather than that in 40 CFR §503.13. The level should be 0.16 lbs/acre/yr. However, the Service has no basis for raising the levels above those set in 40 CFR §503.13(a)(2) as some urged.

Comment: Some suggested basing the allowable levels of the metals listed in Tables 2 on the % P₂O₅ since contributions among products would be more nearly comparable.

Response: There are good reasons for not doing so: (1) the Service and users must deal with a wide variety of products which do not contain P₂O₅; some standard must be set for them; (2) the customer needs to be able to determine quickly and easily at what levels he/she may appropriately use the product without calculations to an abstract base – lbs of product per acre per year is directly understandable; (3) the Service is not interested in achieving comparability of contribution, but whether the product used as normally expected exceeds the limits stated.

Comment: The question was asked how a national manufacturer could distinguish the individual production runs that would produce an appropriate paper trail for a product that is produced at various times during the year in massive quantities – placed after production in a common pile and intermixed with new production and shipped over time to customers.

Response: The Service discussed this issue with representatives of the fertilizer industry while developing the rule. The Service is interested in product distributed not in how firms trade product before distribution. What is required is that the distributor provide information on that product in that shipment. Many firms indicated they already had tracking systems in place for product entering distribution which will satisfy the need. However, if they do not wish to do so, firms have the option of labeling according to §65.17(g). The Service believes it inappropriate to prescribe any particular method to achieve the goal of providing information to the user.

Comment: The Service was asked what basis it had for the requirements set forth in §65.17(e)(3)(A) and (B) which detail

the Service's intent in obtaining additional information from a registrant regarding safety, availability and efficacy.

Response: Section 63.032(a)(3) Application for Registration of the Texas Fertilizer Law provides the Service with the authority to request additional information from a registrant. Section 63.035 of the Law grants the Service authority to refuse or revoke registration if fertilizers do not comply with the Law. Section 63.142 and §63.143 of the Law give the Service authority to cite as violations of the Law false statements (efficacy and availability) and distribution of a product containing a poisonous or deleterious substance.

The following specialty fertilizer companies – A. H. Hoffman, Central Garden & Pet, J. R. Peters, Martin Resources, Pursell Industries, Scott-Miracle Gro Products, The Andersons, The Espoma Company, The Scotts Company, United Industries Corp. – in a common letter and Stoller Industries opposed one or more portions of the new section. PCS Sales specifically objected to the cumulative level of molybdenum set as standard. However, PCS specifically approved adopting of other limits.

Texas Ag Industries Association and Frit Industries commented in favor of the new rule.

One editorial correction is made in the rule. Under §65.17(b)(2), there should be closing quotation marks following the words (statement notes location on package). A correction of error was published in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6754).

The new rule is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter H, §63.142 and §63.143 are affected by the new rule.

§65.17. General Requirements.

(a) Primary Plant Nutrients

(1) Nitrogen, available phosphate and potassium shall be guaranteed on the label of a commercial fertilizer in either of the following forms:

(A) Abbreviated Label or

Figure: 4 TAC §65.17(a)(1)(A)

(B) Expanded Label

Figure: 4 TAC §65.17(a)(1)(B)

(2) Plant nutrients other than nitrogen, available phosphate, and potassium, when mentioned in any form or manner on the label of a fertilizer product other than in the list of ingredients shall be guaranteed.

(A) Guarantees other than nitrogen, phosphate, and potassium shall be expressed on an elemental basis as a percentage by weight.

(B) Any guarantees or claims for plant nutrients shall appear in the order given, shall immediately follow the guarantees for the nitrogen, available phosphate, and potassium. Absent evidence that an unlisted nutrient fulfills the requirement of subsection (e)(3)-(4) of this section, the only guarantees are as follows:

(i) Inorganic: Calcium (Ca), Magnesium (Mg), Sulfur (S), Boron (B), Chlorine (Cl), Cobalt (Co), Copper (Cu), Iron

(Fe), Manganese (Mn), Molybdenum (Mo), Sodium (Na), Selenium (Se), Vanadium (V), Zinc (Zn).

(ii) Organic: Humic acid.

(b) The label shall

(1) list all components of the fertilizer alphabetically; or

(2) bear a statement which says in effect, "Information about the components of this lot of fertilizer may be obtained by writing to (name and address of manufacturer/guarantor) and giving the lot number which is found (statement notes location on package)"; or

(3) conform to §65.26(2) of this title (relating to Requirements for Fertilizers Suitable for Use in Organic Production Programs).

(c) The component of a fertilizer must be denoted by its usual or common name or by a name

(1) as accepted by the United States Department of Agriculture's National Organic Program; or

(2) as defined by a term promulgated by the Association of American Plant Food Control Officials; or

(3) as approved by the Texas Department of Agriculture's Organic Certification Program; or

(4) as approved by the Service.

(d) The label shall display

(1) directions for use which include both an amount to be applied per unit area and a frequency of use per year; or

(2) a statement which says in effect, "'For the agronomic application rates suitable for your geographical area or the maximum allowable non-nutrient application rates per acre, consult a trained soil specialist or write to (name and address of manufacturer/guarantor).'"

(e) The registrant of a fertilizer shall furnish to the Service upon request:

(1) the proposed label;

(2) the source of the elements guaranteed;

(3) proof that any non-traditional fertilizer components or additives guaranteed or claimed on the label provide:

(A) long-term safety to animals, plants, and the environment; and

(B) availability and efficacy;

(4) a method acceptable to the Service for determining any component at 50% of the level guaranteed on the label; and

(5) the levels of arsenic, cadmium, cobalt, mercury, molybdenum, nickel, lead and selenium in the product.

(f) Registrants who elect to have their labels conform to subsection (b)(2) and/or subsection (d)(2) of this section shall keep the requisite production and formulation records by customer, by invoice, by lot/batch numbers for 18 months from the production date and make such available to the public on written request and to the Service at any time.

(g) Registrants who elect to have their labels conform to subsection (d)(2) of this section shall not distribute any lot of fertilizer when any one of the elements listed in Table 1 exceeds the limiting value shown.

Figure: 4 TAC §65.17(g)

(h) Any guarantee of the degree of fineness of unacidulated phosphatic materials stated on the label of a fertilizer product shall be stated in terms of the percentage of the material that will pass the United States standard sieve series number 200 (200 mesh, dry sieve method), adopted by reference under §65.51 of this title (relating to Sampling and Analytical Procedures).

(i) Any guarantee of the degree of fineness of basic slag stated on the label of a fertilizer product shall be stated in terms of the percentage of the material that will pass the United States standard sieve series number 100 (100 mesh, dry sieve method), adopted by reference under §65.51 of this title.

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 July 13, 1998.

TRD-9811014

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (512) 845-1121



4 TAC §65.21

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts the repeal of §65.21, concerning Primary Plant Nutrients of 4 TAC: Chapter 65 Commercial Fertilizer Rules effective September 1, 1998. The repeal is made to incorporate the text into §65.17 - General Requirements - to accommodate new labeling requirements.

No comments were received regarding the repeal to the rule.

The repeal is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter D, §63.054, is affected by the repeal.

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 July 13, 1998.

TRD-9811018

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (512) 845-1121



4 TAC §65.24

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts an amendment to §65.24, concerning Warnings or Cautionary Statements with changes to the proposed text as published in the *Texas Register* June 5, 1998 (23 TexReg 5871).

One editorial change was made in §65.24(3)(B) – the title of the Table should be Cumulative Element Loading Rate. A correction of error was published in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6754).

The amendment includes an additional warning statement for acceptable levels of trace elements and a list of these elements and also includes editorial changes to ensure consistency throughout the section. The amendment is necessary to ensure that the section is consistent with new §65.17.

Change: In §65.24(3)(B) Table 2, add for clarification in the title of the Table: "When Conforming to §65.17(d)(1)."

The following comments were received. Following each comment is the Service's response.

Comment: A number of respondents believed the allowable levels of molybdenum given in the Tables are inconsistent.

Response: They are correct; the molybdenum level in Table 2 (§65.24(3)(B)) is the so-called Canadian standard rather than that in 40 CFR 503.13. The level should be 0.16 lbs/acre/yr. However, the Service has no basis for raising the levels above those set in 40 CFR 503.13(a)(2) as some urged.

Comment: The Service was questioned as to why there was no terminology in regard to the directions for use.

Response: The Service assumes the comment applies only to §65.24(3) where it appears in the respondent's letter. While the Service believes it inappropriate to prescribe any particular statement for such directions, the essential details are laid out in §65.17(d).

Comment: One commentor suggests that a manufacturer is forced to accept a choice of being either below or exceeding the two tables defined levels of heavy metals.

Response: The Service disagrees. What the manufacturer decides is what labeling information it wishes to provide the user. If it provides directions for use on the label, the product must comply with Table 2. If it chooses not to do so, the product must comply with Table 1.

Stoller Industries opposed the amendment to the rule. Texas Ag Industries Association and Frit Industries favored the amendment to the rule.

The amendment is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter D, §63.054, and Subchapter H, §63.143, are affected by the amendment.

§65.24. *Warnings or Cautionary Statements Required.*

A warning or cautionary statement is required on any fertilizer product which:

- (1) contains 0.10% or more boron in water soluble form.

The statement shall include:

(A) the word "Warning" or "Caution" conspicuously displayed;

(B) the crop(s) for which the fertilizer is recommended; and

(C) that the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s);

(2) contains 0.001% or more of molybdenum. The statement shall include:

(A) the word "Warning" or "Caution" conspicuously displayed; and

(B) that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals;

(3) when applied according to the directions for use adds to the land levels of trace elements exceeding the limits set forth in Table 2, subparagraph (B) of this paragraph.

(A) The statement, conspicuously displayed, shall read "WARNING: Application according to the directions for use EXCEEDS the allowable limits of certain trace elements which can be applied to one acre of land in a calendar year."

(B) Table 2. Cumulative Element Loading Rate When Conforming to §65.17(d)(1)
Figure: 4 TAC §65.24(3)(B)

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-9811015

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

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For further information, please call: (512) 845-1121



4 TAC §65.25

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts the repeal of §65.25, concerning Degree of Fineness of Unacidulated Phosphatic Materials and Basic Slag of 4 TAC: Chapter 65 Commercial Fertilizer Rules effective September 1, 1998. The repeal is made to incorporate the text into §65.17 - General Requirements - to accommodate new labeling requirements.

There were no comments made on the proposed repeal.

The repeal is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter D, §63.054, is affected by the repeal.

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-9811019

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (409) 845-1121



4 TAC §65.26

The Office of the Texas State Chemist, Texas Feed and Fertilizer Control Service, adopts an amendment to §65.26, concerning Requirements for Fertilizers Suitable for use in Organic Production Programs without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5872) and will not be republished.

The amendment is necessary to clarify the section and to delete that portion of §65.26(2) which has been moved to §65.17(c).

No adverse comments were received regarding this amendment. The Texas Ag Industries Association and Frit Industries commented favorably.

The amendment is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter D, §63.054, is affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9811016

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (409) 845-1121



4 TAC §65.28

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts an amendment to §65.28, concerning Trademarks, Trade Names, Common Names, Emphasis on a Particular Component without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5872) and will not be republished.

The amendment to the section is only editorial in nature. Section 65.28(3) has the word "and" and it is being removed from the text.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and

Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter D, §63.054, is affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9811017

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (409) 845-1121



Subchapter F. Appeals and Rehearing

4 TAC §65.85

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, proposes to repeal §65.85, concerning Notice of Opportunity for Appeals and Rehearings in effective September 1, 1998. The repeal is proposed because this section simply recapitulates §63.128 of the Fertilizer Law.

Dr. George W. Latimer, Jr. has determined that for the first five-year period the repeal is in effect, there will be no financial implications for the Office, state or local government as a result of enforcing or administering the section.

Dr. Latimer also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated is an elimination of redundancies. There will be no effect on small businesses. There is no anticipated economic cost to persons as a result of repealing this section.

Comments on the proposed changes may be submitted to Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or FAX (409) 845-1389.

The repeal is proposed under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter G, §63.128, is affected by the proposed repeal.

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-9811020

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (409) 845-1121



TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 69. Regulation of Certain Transportation Services Providers

16 TAC §§69.1, 69.10, 69.20-69.22, 69.60, 69.70, 69.80, 69.90, 69.91

The Texas Department of Licensing and Regulation adopts new §§69.1, 69.10, 69.20-69.22, 69.60, 69.70, 69.80, 69.90, and 69.91 concerning the Regulation of Certain Transportation Service Providers. These sections are adopted without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4755) and will not be republished.

Texas Civil Statutes, article 6675(e) (Vernon 1997) and Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) provide the department with the authority to regulate and register transportation service providers and freight forwarders that operate in this state.

These sections are adopted to implement Chapter 307, Acts of the 75th Legislature, Regular Session 1997 (article 6675(e) Texas Civil Statutes) and establish procedures and requirements necessary for the regulation and registration of certain transportation service providers.

The new rules are adopted under Texas Civil Statutes, article 6675(e) (Vernon 1997) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Articles affected by the new rules are Texas Civil Statutes, article 6675(e) (Vernon 1997) and Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991). §69.1. Authority. These rules are promulgated under the authority of the Regulation of Certain Transportation Service Providers, Texas Civil Statutes, article 6675(e) (Vernon 1997) and Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991).

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 July 9, 1998.

TRD-9810840

Rachelle A. Martin

Executive Director

Texas Department of Licensing and Regulation

Effective date: July 29, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 463-7357



TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter I. Charges Against Architects: Action 22 TAC §1.161

The Texas Board of Architectural Examiners adopts an amendment to §1.161 Disciplinary Action. The amendment to §1.161 is being adopted without changes to the text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3792).

The amendment is being adopted in order to provide specific standards to govern the implementation of an amendment to Vernon's Texas Civil Statutes, Article 249a, Section 11. The expected effect is to allow the agency's enforcement division to enforce the statutory provision consistently and efficiently.

No comments were received concerning the adoption of the amendment.

The amendment is adopted pursuant to Vernon's Texas Civil Statutes, Article 249a, Section 5(b), which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding registration to practice architecture in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9810836

Cathy L. Hendricks, ASID/HDA

Executive Director

Texas Board of Architectural Examiners

Effective date: July 28, 1998

Proposal publication date: April 17, 1998

For further information, please call: (512) 305-8535



Chapter 5. Interior Designers

Subchapter I. Charges Against Interior Designers: Action

22 TAC §5.171

The Texas Board of Architectural Examiners adopts an amendment to §5.171 Disciplinary Action. The amendment to §5.171 is being adopted without changes to the text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3793).

The amendment is being adopted in order to provide specific standards to govern the implementation of an amendment to Vernon's Texas Civil Statutes, Article 9102., Section 5(d). The expected effect is to allow the agency's enforcement division to enforce the statutory provision consistently and efficiently.

No comments were received concerning the adoption of the amendment.

The amendment is adopted pursuant to Vernon's Texas Civil Statutes, Article 249e, Section 5(d), which provides the Texas Board of Architectural Examiners with authority to promulgate rules regarding registration to practice architecture in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9810837

Cathy L. Hendricks, ASID/HDA

Executive Director

Texas Board of Architectural Examiners

Effective date: July 28, 1998

Proposal publication date: April 17, 1998

For further information, please call: (512) 305-8535



Part III. Texas Board of Chiropractic Examiners

Chapter 73. Licenses and Renewals

22 TAC §73.2

The Texas Board of Chiropractic Examiners adopts an amendment to §73.2, relating to continuing education, without changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3793).

The Chiropractic Act, Texas Civil Statutes, Article 4512b, §8b(c), requires the board to establish a minimum number of continuing education courses for licensees for renewal of a license each year. Currently, the board's continuing education program is set out in three separate rules, §§73.2(d), 73.3, and 73.5. Some of the provisions are internally inconsistent. This rulemaking is adopted in conjunction with another rulemaking in order to set out in a single rule, the continuing education requirements and consequences of failing to meet the requirements, to delete other redundant or inconsistent language, and to clarify existing provisions. Substantive changes to the board's continuing education program are found in amendments to §73.3 and §73.5, which have been adopted by the board by separate rulemaking in this issue of the *Texas Register*. The proposed amendments to §73.3 and §73.5 were published for public comment in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5555). The amendment to §73.2 deletes subsection (d). The subject matter of this subsection is addressed in §73.3 and §73.5; therefore the subsection (d) in §73.2 is not needed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and §8b, which requires the board to establish a mandatory continuing education program with which licensees must comply in order to renew their licenses annually.

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 July 13, 1998.

TRD-9811037

Joyce Kershner

Director of Licensure

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22 TAC §73.3, §73.5

The Texas Board of Chiropractic Examiners adopts amendments to §73.3, relating to course options for continuing education and verification of and exemption from mandatory continuing education, and §73.5, relating to failure to meet continuing education requirements, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5555).

The Chiropractic Act, Texas Civil Statutes, Article 4512b, §8b(c), requires the board to establish a minimum number of continuing education courses for licensees for renewal of a license each year. Currently, the board's continuing education program is set out in three separate rules, §§73.2(d), 73.3, and 73.5. Some of the provisions are internally inconsistent. The reason for this rulemaking is to set out in a single rule, the continuing education requirements and consequences of failing to meet the requirements, to delete other redundant or inconsistent language, and to clarify existing provisions. Additionally, §73.3(1)(E) is being amended to allow licensees to listen to audio tapes in addition to video tapes when they are unable to attend continuing education courses due to illness or disability.

The current practice of the board is to allow a licensee an additional 12 months in which to meet the annual continuing education obligation. That practice is continued in §73.5 with some changes. One amendment to §73.5 revises subsection (d). Instead of a license being "canceled" for failure to be reinstated at the end of a probationary period, the board will consider a license to have "expired" from the date of its renewal, with the existing consequence of having to obtain a new license as provided in the Chiropractic Act, §8a(e) and board rule 73.2(c) for failure to renew timely a license. In this context, the word "expired" is consistent with terminology in related board rules and sections of the Chiropractic Act.

New subsections (e)-(h) for §73.5 are adopted. They: prohibit a licensee from applying courses obtained for reinstatement toward the continuing education requirement for the next reporting year; allow a licensee to be placed on probationary status for only one year at a time and prohibit renewal of a license of a licensee who is deficient for two years in a row; prohibit such a licensee from practicing until the license is renewed; and allow renewal if all deficient courses are completed and as provided by §73.2 for expired licenses generally.

Under these amendments, a licensee who is in non-compliance with the continuing education requirements for two consecutive years, must cease practicing as provided by the Chiropractic Act, §8a for expired licenses for failure to renew. Such licensee may renew his or her license by curing any deficiency and complying with §8a and board rule §73.2(c). The adopted rules provide an incentive for timely compliance by making the burdens and sanctions for noncompliance more stringent the longer compliance is delayed.

As stated previously, the Chiropractic Act mandates the board to require continuing education as a condition of renewal, that is, renewal of a license is to be denied if the continuing education

requirement is not met. The Act further expressly states in §8a(a) that practicing without a renewal certificate is practicing without a license, subject to all of the penalties provided in the Act. The overwhelming majority of licensees meet timely the board's annual continuing education requirement each year. For the first five months of the current license year, only four licensees out of more than 1,000 reported incomplete continuing education hours. It is the board's opinion that one year is a reasonable amount of time to complete 16 hours of continuing education. The board also recognizes that circumstances beyond the control of licensee may make compliance difficult or impossible some years. Rule 73.5, as adopted, continues the board's policy of allowing 12 additional months to complete courses for a prior reporting year. However, the additional 12 months is not intended to extend the compliance period to two years on a permanent basis. Accordingly, §73.5(f), as adopted, restricts the number of times a license is allowed an extension to complete the annual continuing education requirement.

The one year probationary limitation in §73.5(f) will not be effective, and thus, not enforced, until January 1, 1999, in order to give licensees ample notice of the new requirement. The board will not count a licensee's continuing education status in 1997-1998. Accordingly, if a licensee is deficient for license years 1997-1998 and 1998-1999 (current license year), he or she would still be eligible for probationary status in license year 1999-2000. He or she would not be eligible in 2000-2001 for any deficiencies in 1999-2000.

The board is deleting part of §73.3(3)(A) by separate rulemaking which was proposed in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3793 and §73.2(d), relating to mandatory continuing education for renewal of license. The subject matter of these provisions is addressed in the new subsections of §73.5. The board is also deleting §73.3(3)(B), which relates to verification of compliance, the subject matter of which is covered in paragraph (2).

Section 73.3(1)(A) and (2)(A) is amended to clarify that licensees are to report compliance at the time of license renewal, that is, on or before the first day of their birth months. The amendment to §73.3(2)(A) also explains the type of verification required. The sanction, in §73.3(2)(C), for failing to provide verification upon request is deleted as being unnecessary. A new subparagraph (C) makes the failure to provide verification for each reporting year the same as non-compliance with the continuing education requirements under §73.5. Verification of compliance is essential to any regulatory program. The absence of verification leaves the board without any adequate mechanism to confirm each licensee's compliance; therefore, failing to submit verification is treated the same as failing to comply in the first instance. Other grammatical and format changes for clarity and consistency have been adopted throughout the affected sections.

Lastly, the board adopts an amendment to §73.3(1)(E). Currently, an eligible licensee may satisfy the board's continuing education requirements by viewing video taped courses which are offered by the Foundation for Chiropractic Education and Research. The adopted amendment adds audio tapes to this provision. The amendment seeks to provide an appropriate accommodation for persons who are ill or disabled by allowing an alternative means of complying with board's continuing education requirements. The amendment will assist licensees who may be visually impaired or otherwise ill or disabled to com-

plete their continuing education requirements by use of audio or video tapes. The amendment indirectly promotes the continuing safety of patients by facilitating access to continuing education training for those licensees who may be physically unable to travel to a course.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and §8b, which requires the board to establish a mandatory continuing education program with which licensees must comply in order to renew their licenses annually.

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-9811033

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



22 TAC §73.4

The Texas Board of Chiropractic Examiners adopts an amendment to §73.4, relating to inactive status, with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5557).

The purpose of this rulemaking is to conform the fee provision in §73.4 to the board's current fee schedule in §75.7 under which the board charges no fee for inactive status. Under subsection (b), as adopted, a licensee who files a late application for inactive status will be subject to late fees for late renewal of a license. Subsection (e) also conforms the rule's re-examination requirement for licensees on inactive status for more than five years to the board's current examinations in §71.6. Other amendments incorporate changes for clarity, grammar and consistency, and delete redundant language in existing subsections (d) and (e). Matters in those subsections are also found in existing subsections (h) and (i). These four subsections have been combined into subsections (d) and (f). It is anticipated that the revised format will provide licensees with better notice of the board's procedures and requirements relating to inactive status. The only change from the proposed version is in subsection (c)(2). The word "place" was changed to "placed".

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512b, §§4(c), 4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, and §8d, which requires the board to establish rules for inactive status.

§73.4. *Inactive Status.*

(a) A licensee who is not currently practicing chiropractic in Texas may request his or her license be placed on inactive status by applying on a form prescribed by the board .

(b) A licensee on inactive status is not required to pay a fee if the application for inactive status is submitted on or before the annual expiration date of the license. If the application is late, the licensee shall be subject to the applicable late fee as provided by §73.2 of this title (relating to Renewal of License). A licensee on inactive status is not required to complete continuing education as provided in §73.3 of this title (relating to Continuing Education).

(c) To place a license on inactive status at a time other than the time of license renewal, a licensee shall:

(1) return the current renewal certificate to the board office; and

(2) submit a signed, notarized statement stating that the licensee shall not practice chiropractic in Texas while the license is inactive, and the date the license is to be placed on inactive status.

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

(1) apply for active status on a form prescribed by the board;

(2) submit written verification of attendance at and completion of continuing education courses as required by §73.3 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education requirement; and

(3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation.

(f) Prohibition against Practicing Chiropractic in Texas. A licensee while on inactive status shall not practice chiropractic in this state. The practice of chiropractic by a licensee while on inactive status constitutes the practice of chiropractic without a license.

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 July 13, 1998.

TRD-9811034

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

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Proposal publication date: May 29, 1998

For further information, please call: (512) 305-6700



Chapter 75. Rules of Practice

22 TAC §75.1, §75.2

The Texas Board of Chiropractic Examiners adopts an amendment to §75.1, relating to grossly unprofessional conduct, and new §75.2, relating to proper diligence and the efficient prac-

tice of chiropractic, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5558).

The amendment to §75.1 is made for the purpose of clarifying the board's intent. The prohibited conduct enumerated in the rule is not an exclusive list. Other types of conduct, based on the totality of circumstances, could also be considered grossly unprofessional conduct in violation of this rule and the Chiropractic Act (Act), Texas Civil Statutes, Article 4512b §14a.5. The rule, as adopted, clarifies that intent by expressly stating that grossly unprofessional conduct is not limited to the enumerated conduct. Also, §75.1, subsection (b) is deleted. The subsection is not necessary, and its inclusion could inaccurately imply that the board did not intend to exercise its power to discipline a licensee under §14a in instances of grossly unprofessional misconduct, but intends only to assess administrative penalties. Under Article 4512b §§14a, 14e, and 19a, the board has power to discipline by suspension, revocation, probation, or assessment of administrative penalties for violations of the Chiropractic Act or its rules or orders. The appropriate disciplinary sanction in a particular case is within the discretion of the board based on the circumstances of the case. In its enforcement activities, the board intends to make use of the full range of the sanctions which are authorized in the Act. Other changes are adopted for further clarity, grammar and consistency.

The board also adopts new §75.2 to provide examples of conduct which it considers to be a lack of proper diligence in the practice of chiropractic or grossly inefficient practice of chiropractic. Article 4512b §14a.14 makes such conduct a basis for disciplining a licensee. Section 14a does not define the terms, "lack of proper diligence" or "grossly inefficient practice," leaving the board with the discretion to define the type of conduct covered by §14a.14. In order to give better notice to licensees of the expected standard of conduct and the consequences if that standard is violated, the board has set out two categories of prohibited conduct which may subject a licensee, under the proper facts, to disciplinary action. Both categories directly relate to the treatment of patients. The failure to comply with appropriate standards can cause injury to a patient; therefore, the board believes that such conduct is at the core of proper diligence and efficient practice of chiropractic, whether a licensee performs basic chiropractic procedures or more complex procedures requiring greater skill and training than provided in the basic curriculum at colleges of chiropractic. Greater awareness of compliance standards and adherence to them will benefit the public by providing greater care in the treatment and safety of patients.

No comments were received regarding adoption of the amendment and new section.

The amendment and new rule are adopted under Texas Civil Statutes, Article 4512b, §§4(c), 4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9811035

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

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Proposal publication date: May 29, 1998

For further information, please call: (512) 305-6700

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Chapter 78. Chiropractic Radiologic Technologists

22 TAC §78.1, §78.2

The Texas Board of Chiropractic Examiners adopts an amendment to §78.1, relating to registration of chiropractic radiologic technologists (CRT's), and new §78.2, relating to definitions for use in Chapter 78, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5560).

The Medical Radiologic Technologist Certification Act (MRTCA), Texas Civil Statutes, Article 4512m §2.08, and the Texas Chiropractic Act, Texas Civil Statutes, Article 4512b §14b, require the board to adopt rules in compliance with the MRTCA and rules of the Texas Department of Health (TDH) relating to medical radiologic technologists. Section 78.1 was originally adopted to implement this statutory mandate. In 1997 (22 TexReg 2230), the board amended the rule to require board registration for persons performing radiologic procedures in a chiropractic facility. Under the MRTCA and TDH rules, all persons performing radiologic procedures had a deadline of January 1, 1998 to complete the mandatory training requirements unless they were performing under the supervision of a practitioner who had been granted a hardship exemption by the TDH, under 25 TAC §143.19. The current §78.1 does not recognize the hardship exemption process. Accordingly, one amendment allows a person to register with the board and to perform radiologic procedures without compliance with the TDH minimum training standards if working under a hardship exemption. Another amendment clarifies the board's annual continuing education requirements for CRT's and the exemption from continuing education during enrollment in TDH's mandatory training and instruction program. A new subsection (g) has been added to §78.1 expressly restricting a CRT to performing such procedures under the supervision of a chiropractor. The TDH's definition of supervision is provided in new §78.2 along with other relevant definitions. New subsections (j) and (k) in §78.1 set out the responsibilities of board licensees in the performance of radiologic procedures under the MRTCA. Lastly, new subsection (l) gives notice that board disciplinary action against a CRT is governed by the Administrative Procedures Act and applicable enforcement provisions in the Chiropractic Act. Other amendments make changes in existing text for clarity and consistency. It is anticipated that §78.1 and §78.2, as adopted, will provide licensees and persons required to be registered under §78.1 better notice of the board's compliance provisions. Moreover, public safety benefits are addressed by requiring chiropractor supervision of CRT's, licensee and CRT responsibility for compliance with the MRTCA and TDH rules, and continuing education of CRT's.

No comments were received regarding adoption of the amendment and new section.

The amendment and new rule are adopted under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board

to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, §6 which authorizes the board to adopt rules establishing guidelines relating to tasks and procedures that a chiropractor may delegate to an assistant, and §14b which authorizes the board to require evidence of proper training, precaution and safety in the use of x-ray in conformity with state law and TDH rules and to implement state law relating to radiologic training for employees of a chiropractor. The amendment and new rule are further adopted pursuant to the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m §2.08, which requires the board to adopt rules relating to the delegation and supervision of the performance of radiologic procedures and which must include certain specified requirements listed in §2.08(c).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9811036

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

Effective date: August 2, 1998

Proposal publication date: May 29, 1998

For further information, please call: (512) 305-6700



Part XIV. Texas Optometry Board

Chapter 271. Examinations

22 TAC §271.1

The Texas Optometry Board adopts an amendment to §271.1, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4762).

Section 271.1 is required in order to inform licensees and general public of the correct and applicable legal cite.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.01 and §2.14. The Texas Optometry Board interprets §3.01 as authorizing the entry level examination for licensure. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810981

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

Effective date: September 1, 1998

Proposal publication date: June 5, 1998

For further information, please call: (409) 845-1121

◆ ◆ ◆
22 TAC §271.2

The Texas Optometry Board adopts an amendment §271.2, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4763).

Section 271.2 is required in order to inform applicants regarding the application process and submission of references.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §§3.02, 3.03, and 2.14. The Texas Optometry Board interprets §3.02 as authorizing the procedures for application to take the examination and §3.03 as authorizing procedures for submitting the examination fee. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810982

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

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §271.3

The Texas Optometry Board adopts an amendment to §271.3, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4763).

Section 271.3 is required in order to inform applicants regarding procedures for the Jurisprudence examination for licensure.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §§3.01, 3.02, 3.06 and 2.14. The Texas Optometry Board interprets §3.01 as authorizing the entry level examination for licensure and interprets §3.02 as authorizing the procedures for application to take the examination and §3.06 as authorizing the conduct of the examination. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810983

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

Effective date: August 2, 1998

Proposal publication date: June 5, 1998

For further information, please call: (409) 845-1121



22 TAC §271.4

The Texas Optometry Board adopts the repeal of §271.4, without change to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4764).

Section 271.4 is no longer required since it addressed re-examinations of a clinical and written examination no longer given by the Board.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §§3.01, 3.02, 3.06 and 2.14. The Texas Optometry Board interprets §3.01 as authorizing the entry level examination for licensure, interprets §3.02 as authorizing the procedures for application to take the examination and §3.06 as authorizing the conduct of examination. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810984

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §271.6

The Texas Optometry Board adopts an amendment to §271.6, without change to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4764).

Section 271.6 is required in order to inform applicants for licensure that the national board examination is required for licensure in Texas.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §§3.01, 3.06 and 2.14. The Texas Optometry Board interprets §3.01 as authorizing the entry level examination for licensure, and interprets §3.06 as authorizing the conduct of examination. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810985

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



Chapter 273. General Rules

22 TAC §273.1

The Texas Optometry Board adopts an amendment to §273.1, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4765).

Section 273.1 is required in order to grammatically correct language in regard to alternatives to surrender of license when a license has not been renewed.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §4.04 and §2.14. The Texas Optometry Board interprets §4.04 as authorizing procedures for the renewal of licenses. The Board interprets § 2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810986

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §273.4

The Texas Optometry Board adopts an amendment to §273.4, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4765).

Section 273.4 is required in order to inform licensees of the fee to be assessed when a licensee becomes therapeutically certified.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §§1.03, 3.03, and 2.14. The Texas Optometry Board interprets §1.03 and §3.03 as authorizing the establishment of fees for therapeutic optometry. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810987

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §273.5

The Texas Optometry Board adopts an amendment to §273.5 without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4766).

The §273.5 amendment streamlines the duties required of deans of educational institutions regarding the licenses of faculty members.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Civil Statutes, Articles 4552-2.14 and 4552-3.09. The Texas Optometry Board interprets §2.14 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §3.09 as authorizing the issuance of a limited license to a clinical faculty member.

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 July 13, 1998.

TRD-9810988

Lois Ewald

Executive Director

Texas Optometry Board

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Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §273.6

The Texas Optometry Board adopts an amendment to §273.6, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4766).

Section 273.6 is required in order to inform provisional licensees of the testing requirements.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.08 and §2.14. The Texas Optometry Board interprets §3.08 as authorizing the procedures for provisional licensure prior to examination. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810989

Lois Ewald

Executive Director

Texas Optometry Board

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Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §273.7

The Texas Optometry Board adopts an amendment to §273.7, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4767).

Section 273.7 is required in order to grammatically correct language in regard to an inactive license.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.104 and §2.14. The Texas Optometry Board interprets §3.10 as authorizing the provision for licensees to place their license on inactive status. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810990

Lois Ewald

Executive Director

Texas Optometry Board

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Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §273.8

The Texas Optometry Board adopts an amendment to §273.8, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4768).

The §273.8 amendment imposes a late penalty fee on licensees, along with the continuing education penalty fee, who have not met mandatory continuing education requirements in compliance with the law.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552-2.14, 4552-4.01, and 4552-4.01B. The Texas Optometry Board interprets §2.14 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §4.01 as authorizing an annual renewal fee and late penalty fees and §4.01B as authorizing the requirement of continuing education

including penalty for not timely obtaining the mandatory continuing education.

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 July 13, 1998.

TRD-9810991

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



Chapter 277. Practice and Procedure

22 TAC §277.2

The Texas Optometry Board adopts an amendment to §277.2, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4768).

Section 277.2 specifies that the Board's legal counsel may be in attendance at informal conferences, in lieu of the attorney general's representative.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §§4.04, 4.05 and 2.14. The Texas Optometry Board interprets §4.04 as authorizing the Board to establish the procedures for informal conferences and §4.05 as authorizing an administrative penalty against a person licensed or regulated under the Act. The Board interprets § 2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810992

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



Chapter 279. Interpretations

22 TAC §279.5

The Texas Optometry Board adopts an amendment to §279.5, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4769).

Section 279.5 is required in order to inform licensees of those examinations required to be performed by the licensee and those which may be performed by an assistant, and to establish certain instrumentation to be used in certain examination steps.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §5.12 and §2.14. The Texas Optometry Board interprets §5.12 as authorizing the interpretation of what constitutes the specific basic competence steps of an initial examination as required by the Act. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810993

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §279.14

The Texas Optometry Board adopts an amendment to §279.14, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4770).

Section 279.14 specifies the form of an acceptable prescription for dispensing contact lenses and exceptions that are applicable under certain circumstances.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.02 and §2.14. The Texas Optometry Board interprets §1.02 as authorizing the interpretation of a fully-written contact lens prescription as required by the Act including the format of a prescription in an emergency situation. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810994

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



22 TAC §279.15

The Texas Optometry Board adopts an amendment to §279.15, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4771).

Section 279.15 is required in order to grammatically correct rule language concerning definitions of infectious or contagious diseases.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §5.08 and §2.14. The Texas Optometry Board interprets §5.08 as authorizing the adoption of rules prohibiting an optometrist or therapeutic optometrist from practicing while knowingly suffering from a contagious or infectious disease. The Board interprets § 2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810995

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



Chapter 280. Therapeutic Optometry

22 TAC §280.1

The Texas Optometry Board adopts an amendment to §280.1, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4771).

Section 280.1 is required in order to clarify for licensees the amount of the certification fee for therapeutic licensure.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.03 and §3.03 and §2.14. The Texas Optometry Board interprets §1.03 as authorizing the interpretation of the therapeutic optometry requirements established by the Act and interprets §3.03 as authorizing the Board to establish fees for examination certification. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810996

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502

◆ ◆ ◆
22 TAC §280.2

The Texas Optometry Board adopts an amendment to §280.2, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4772).

Section 280.2 is required in order to inform licensees of the correct name for the Board committee reviewing therapeutic education.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.03 and §2.14. The Texas Optometry Board interprets §1.03 as authorizing the interpretation of the therapeutic optometry requirements established by the Act. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9810997

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: August 2, 1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 305-8502



TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter K. Client-Identifying Information

25 TAC §§403.291-403.308

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§403.291- 403.308 of Chapter 403, Subchapter K, concerning client-identifying information without changes to the proposal as published in the March 27, 1998, issue of the *Texas Register* (23TexReg3180). New §§414.1-414.17 of Chapter 414, Subchapter A, concerning the same, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections.

No public comment was received.

The repeals of these sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rule-making authority, and with the Texas Health and Safety Code, §595.002, which allows the Board to adopt rules that it considers necessary to facilitate compliance with Chapter 595.

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 July 13, 1998.

TRD-9811023

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: August 3, 1998

Proposal publication date: March 27, 1998

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



Chapter 404. Protection of Clients and Staff

Subchapter H. Criminal History Clearances

25 TAC §§404.301-404.309

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§404.301 - 404.309 of Chapter 404, Subchapter H, concerning criminal history clearances, without changes to the proposal as published in the April 17, 1998, issue of the *Texas Register* (23TexReg3800). New §§414.501 - 414.509 of new Chapter 414, Subchapter K, concerning the same, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections.

No public comment was received.

These sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Texas Health and Safety Code, §250.002(d) and §533.007, which permit TDMHMR to adopt rules relating to the processing and use of criminal history information.

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 July 13, 1998.

TRD-9811021

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: August 3, 1998

Proposal publication date: April 17, 1998

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



Chapter 407. Internal Facilities Management

Public Records

25 TAC §407.151-407.161

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of §§407.151-161 of Chapter 407, concerning Public Records, without changes to the text as proposed in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4775).

The repeal is adopted because the statute requiring the department to adopt by rule specific charges for public information was deleted from the Public Information Act (the Act). During the 75th Legislative Session in 1997, the Act was amended deleting the provision that required the department to adopt by rule charges for providing public information. As required by the Act, the department uses the charges set forth in GSC rules. These charges and the department's procedures for processing requests for public information are described in the Open Records Operating Instruction (417 - 7), which remains in effect.

No public hearing was held and no written comments were received from the public.

The repeal is adopted under the Texas Health and Safety Code, §532.015, which provides the department with broad rulemaking authority.

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 July 13, 1998.

TRD-9811025

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: August 3, 1998

Proposal publication date: May 15, 1998

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



Chapter 414. Protection of Individuals and Individual Rights

Subchapter A. Client-Identifying Information

25 TAC §§414.1-414.17

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§414.1 - 414.17 of Chapter 414, Subchapter A, concerning client-identifying information. Sections 414.2 - 414.10, 414.12, and 414.14 - 414.16 are adopted with changes to the proposed text as published in the March 27, 1998, issue of the *Texas Register* (23TexReg3181-3188). Sections 414.1, 414.11, 414.13, and 414.17 are adopted without changes. The repeals of §§403.291 - 403.308 of Chapter 403, Subchapter K, concerning the same, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The subchapter describes the state and federal statutory requirements for disclosure of client-identifying information.

Language in §414.2 is modified to specify that the entire subchapter applies to facilities and state-operated community services (SOCS), and that all of the sections in the subchapter, except §414.14, apply to local authorities that are not SOCS. The section also requires contract providers' compliance with the subchapter pursuant to the contract. In §414.3(10)(B), the definition of "incompetent" is revised to state the professional determines if the client does not have the ability to comprehend the effect or consequences of giving consent to disclose confidential information. Definitions for "subpoena" and "subpoena duces tecum" are added to the same section. Refer-

ence to the Texas Council on Offenders with Mental Impairments, Texas Health and Safety Code, Chapter 614, as it relates to the exchange of client-identifying information concerning special needs offenders, is added as a new subsection (h) in §414.4. Language is added to §414.5(d) clarifying that client-identifying information could be released without consent if it were done in accordance with law. The designation of the exhibit mentioned in §414.6(c), which was incorrectly referenced as Exhibit B, is changed to Exhibit A. Language is added to §414.7(a)(1) and §414.8(a)(1) clarifying that consent to disclosure of client-identifying information is not required if proper consent has been obtained previously *and has not been revoked*. Language is added to §§414.7(c)(9) and 414.8(c)(2) referencing the federal regulations that allow Advocacy, Inc. access to client-identifying information. Language is modified in §414.7(f) to identify the agencies and their divisions that are responsible for providing continuity of care to special needs offenders and that can exchange confidential information concerning a special needs offender. Language is modified in §414.9(b) to require the use of Exhibit B for facilities only. Reference to the Consent for Publication form and its use is added as a new subsection (d) in §414.9.

A list of who is within the first degree of consanguinity is added to §414.10(c). Language is added to §414.12(a) and (b) requiring the determination that access by the client to parts of his/her record that would not be in the client's best interest to receive be made within three working days. Language is added to §414.12(b)(1) clarifying that the written statement must state that having access to the *specified portion of the record* would be harmful. Language is added to §414.12(b)(5) requiring the summary or narrative to be prepared within 10 working days, rather than within a reasonable time. Language is added to §414.12(c)(1) requiring that access to the record be provided within three working days. Language is added to §414.12(c)(2) clarifying that a client *or the client's LAR* (legally authorized representative) can authorize an attorney to have access to the client's records. Modifications are made to the title of §414.14 and its text to require only facility and SOCS staff compliance. The statutory reference in §414.14(b)(1)(A) is corrected. The Consent for Publication form is added as Exhibit C in §414.15(3). The references in §414.16 are updated to include changes made to the subchapter upon adoption.

Written public comment was received from the Texas Council of Community MHMR Centers, Austin; Burke Center, Lufkin; Life Resources Managed Care Services, Beaumont; Tri-County MHMR Services, Conroe; Texas Commission on Jail Standards, Austin; Texas Council on Offenders with Mental Impairments, Austin; Bell County Sheriff's Office, Belton; Collin County Sheriff's Office, McKinney; Advocacy, Inc., Austin; Parent Association for the Retarded of Texas (PART), Austin; the parent of a state school resident, Garland; and a mental health consumer advocate, Houston.

Regarding §414.14(b)(1)(A), one commenter stated that "there was much confusion following the 74th Legislative Session (1995) regarding the type of subpoena that legally compels [community] centers and other health care providers to disclose medical records. The confusion centered around the term 'court subpoena' used in Chapter 241 of the Texas Health and Safety Code and Article 4495b, Rev. Tex. Stat. Ann. Most medical records subpoenaed for lawsuits are obtained with a subpoena issued by a notary public from a records service company. Using a court subpoena (as stated in Chapter 414, Subchapter

A, Section 414.14(b)(1)(A)) increases judicial intervention, increases attorney fees, and significantly increases the time it takes to obtain records. Senator Frank Madla, who authored S.B. 667, 74th Legislature, recognized the unintended confusion caused by the Bill and issued a letter addressing his real intent... In that letter he promised to resolve the confusion during the 75th Legislative Session (1997). Note that Chapter 611.006(11) of the Texas Health and Safety Code simply uses the term 'subpoena.' Chapter 241.515 et seq. was then amended in the 75th Legislative Session to state that if a patient is a party to a law suit, medical records may be obtained with a notary subpoena alone; but if the patient is not a party to a law suit, a court order or a court subpoena must be obtained. This clarification is in line with the Rules of Civil Procedure and gives adequate protection to subpoenaed medical records." The commenter stated that the rule's language reflects language adopted during the 74th Legislative Session (1995) in Chapter 241 of the Texas Health and Safety Code, but it conflicts with the amended language in Chapter 241 adopted by the 75th Legislative Session (1997). The commenter stated that such conflict will create confusion for community centers and their hospital contractors. The commenter added that "the circumstances surrounding an administrative or judicial proceeding, other than litigation, determine the type of subpoena and the entity authorized to use such. These situations vary, and knowing the requirements for release of information with or without consent requires an attorney's opinion based on the circumstances of the situation." Because of the stated reasons, the commenter provided suggested language that would reflect the commenter's position. The department responds by acknowledging that, generally, §414.14 provides procedural interpretation of statutes and Rules of Evidence. While it is appropriate to provide such interpretation for its facilities and SOCS, the department understands that local authorities and contract providers should be responsive to the statutory interpretation of their legal counsel on these matters. Therefore, the department modifies §414.14 to apply only to facility and SOCS staff.

Regarding §414.7(f), the same commenter stated that "the ability to release information without consent among agencies providing continuity of care for a special needs offender continues to be an area of misunderstanding. Adding language to this rule to address the provisions of Section 614.017 of the Texas Health and Safety Code is an important step toward achieving statewide understanding of this statutory permission. We observe that the proposed language does not sufficiently embrace all the agencies who are authorized to provide continuity of care for special needs offenders (and thereby share information without consent in accordance with the provisions in Section 614.017)." The commenter provided suggested language that would reflect the commenter's position. The department concurs and adds language to reflect the commenter's concerns.

The same commenter requested adding definitions for "subpoena" and "subpoena duces tecum." The department responds by adding definitions as requested.

The same commenter suggested adding the statutory reference governing disclosure of information regarding special needs offenders to §414.4 (Statutes and Federal Regulations Governing Disclosure). The department responds by adding language to reflect the commenter's suggestion.

Regarding the definition of "incompetent" in §414.3(10)(B), two commenters asked who will make the decision that the client doesn't have the ability to comprehend the effect or conse-

quences of giving consent to disclose confidential information and what criteria will be used to make the decision. The commenters added that, by not clarifying who can make the decision, the rule could be used to empower staff who are not qualified to make a decision of this importance. The department responds by adding language stating the professional (as defined in §414.3(15)) makes the determination of whether the client has the ability to comprehend the effect or consequences of giving consent to disclose confidential information. Regarding the criteria, the department responds that establishing criteria for such a determination is unnecessary because the professional's education and experience in diagnosing, evaluating, and treating mental and emotional conditions is sufficient for him/her to make a determination of whether the client has the ability to comprehend the effect or consequences of giving consent to disclose confidential information.

Regarding the definition of "qualified service organization" in §414.3(16)(A), the same commenters asked why it is applicable only to chemical dependency programs and not extended to MHMR programs. The department responds that the federal statute allowing for the exception is applicable only to chemical dependency records.

Regarding §414.7(b)(11), the commenters requested further clarification asking which "agency" is being referenced and if all subpoenas can be accepted or just those subpoenas that are court ordered. The department responds that the agency being referenced includes those agencies with subpoena power, such as the Texas Department of Protective and Regulatory Services, the Texas Department of Human Services, or any other agency involved in an administrative hearing under the Administrative Procedures Act. Regarding which subpoenas can be accepted, the department responds that only court- or agency-issued or -ordered subpoenas are acceptable. The department notes that under current law, a notary subpoena alone is not sufficient for the release of client-identifying information.

Regarding §414.9(b), the same two commenters questioned why the use of the Exhibit B consent form was required, noting several of the form's inadequacies as it relates to other programs (e.g., TCADA, ECI). The commenters expressed concern about the fine print for the release of HIV/AIDS information, asking if clients will really know they are agreeing to the release of this information. The commenters also asked why the client is referred to as "patient." The department responds by deleting the requirement for local authorities and contract providers to use Exhibit B. The department notes, however, that the elements listed in §414.9(a) are still required in order for consent to be valid. Regarding the commenters concern about the fine print for the release of HIV/AIDS information, the department responds that the print size is the same for all information on the form. Regarding the client being referenced as "patient," the department responds that Exhibit B is used for the release of *medical records*, and generally medical records are for patients. Additionally, Chapter 611 of the Texas Health and Safety Code uses the term "patient."

Regarding §414.10(c), the commenters requested that the term "consanguinity" be redefined in layman's language because the word was too large for most staff to understand. The department responds by adding language to reflect the commenters' request.

Regarding §414.12, the same two commenters stated that there should be a time frame for denial of access to information or

for providing copies to the client and that the client should also be provided an appeal method. The commenters suggested the time frame for denial be 90 days and the appeal method should be review by another professional of the client's choice at the client's expense. If the other professional disagrees with the decision to deny the client access, then the facility should provide a third unbiased professional to review the case and make a decision that all parties will follow. The department responds that it believes a 90-day time frame for denying a client access to a portion of his/her record is much too long and patently contrary to all other access time frames. The department adds a three-working-day time frame. Regarding an appeal method, the department responds that an appeal method is unnecessary because §414.12(b)(3) allows for the examination and copying of the record by another professional if the client selects the other professional to treat the client for the same or a related condition as the professional denying access.

Regarding §414.12(b)(5), the commenters asked that "within a reasonable time" be clarified. The commenters stated that reasonable does not mean the same thing to all people. The commenter also stated that the law allows only 15 days after the payment is received for information to be provided. The department responds by modifying language to state the summary or narrative is prepared within 10 working days.

Regarding §414.12(c)(1), the commenters again asked that "reasonable time," as well as "reasonable fee" be clarified. The commenters suggested that the rule "follow the new law for charges for outside requests and set a lower fee for the client. There also needs to be an addendum that only allows the client to receive one copy of the information without charge." The department responds by modifying language which grants access to the record within three working days. Regarding clarification of reasonable fee, the department notes that the action is *permissive* and not required. Adding clarifying language could be interpreted as making the action (i.e., charging a fee) mandatory. Further, the department directs any client who believes he/she is being charged an unreasonable fee for access to his/her records to contact Advocacy, Inc., at 1-800-315-3876.

Regarding §414.14(b)(1)(C), the commenters asked if the language meant that information could be released without consent with a subpoena that is not court-issued. The department responds that, for a facility or SOCS, a subpoena must be court or agency issued in order for client-identifying information to be released without consent. The department notes that §414.14 is modified to apply only to facility and SOCS staff.

Regarding §414.7(b), one commenter suggested, for consistency with §414.14(b)(1)(A), adding the phrase "if the request is made for records pursuant to Texas Rules of Civil Evidence 510(d)." The commenter then suggested referencing §414.7(b) in §414.14(b)(1)(A) and deleting §414.14(b)(1)(B). The department responds that, while there is significant overlap between the Texas Health and Safety Code, Chapter 611, and Texas Rules of Civil Evidence, the former controls on disclosure and the later controls on admissibility of the evidence that is produced in a court situation. The department elects to include only the provisions of the Texas Health and Safety Code, Chapter 611, because the rules being adopted deal primarily with the disclosure of client-identifying information. The department notes that §414.14 is modified to apply only to facility and SOCS staff.

Regarding §414.5(g) and (h), one commenter stated that the deletion of the two subsections would certainly hinder a jail's ability to ensure ongoing care and/or provide appropriate care for those individuals entering the jail who may not yet have reached the crisis level provided for in §611.004(a)(2) of the Texas Health and Safety Code. The commenter added that the intent of recent legislation was to encourage the exchange of information, thereby reducing duplication, improving levels of care through continuity of care, as well as saving taxpayers money. The department responds that the deletion of the two subsections reflects the amendments to §576.005 (Texas Health and Safety Code) adopted in the 75th Legislative Session (1997). The department notes that §611.004(a)(9) of the Texas Health and Safety Code allows for a professional to disclose client-identifying information without consent "to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient." The provision, which is also stated in §414.7(c)(12), would ensure ongoing care and/or provide appropriate care for those individuals entering the jail who have not yet reached the crisis level.

Regarding §414.7(f), one commenter stated that although House Bill 1747 (75th Legislature) added community supervision and corrections departments as a continuity of care agency, the bill did not delete the Texas Council on Offenders with Mental Impairments from the exchange of information process. The commenter noted that the statutory provisions cited in Chapter 614 (Texas Health and Safety Code) allows *all* continuity of care agencies to be included in the exchange of information process without consent. The commenter stated that the exclusion of such allowance in the department's rules renders the rules out of compliance with statutory guidelines. The department responds by adding language to address the commenter's concern.

Two commenters expressed concern that the proposed rules concerning "special needs offenders" would have a direct negative impact on jail operations. The commenters stated that the physical and mental conditions of inmates directly correlate to their care while in custody and that access to an inmates' medical information is crucial. The department responds that it does not believe that the proposed rules concerning "special needs offenders" could create such a broad negative impact, mainly because the term "special needs offender" is very narrowly defined. The department notes that gaining medical information of inmates is addressed in §611.004(a)(9) of the Texas Health and Safety Code, which allows for a professional to disclose client-identifying information without consent "to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient." The provision is also stated in §414.7(c)(12).

Regarding the definition of "legally authorized representative (LAR)" in §414.3(12)(E), two commenters requested the addition of the phrase "this cannot be used if the client has legal guardian." The department responds that the addition of the phrase is unnecessary because state statute and the department's rules (which are referenced in the definition) clearly delineate the activities of a surrogate decision-making committee or surrogate decision-maker.

Regarding the definition of "professional" in §414.3(15), the same two commenters requested deleting the language "or person reasonably believed by the client to so be" because

merely believing a person to be a professional does not make the person a professional. The department declines to delete the language because it is consistent with §611.001(2)(C) of the Texas Health and Safety Code.

Regarding §414.5(b), the commenters requested deleting the subsection because it is an automatic assumption that records received from sources outside the department are not to be protected. The department declines to delete the subsection because it believes that the commenters have misinterpreted the language. The department notes that the rule states records received from outside sources "that become a part of the client's record *may be released under the guidelines established in this subchapter.*" This means that client records received from outside sources are *protected* and released in the same manner as records that are created internally.

Regarding §414.6(a), the same two commenters requested the term "or legally authorized representative (LAR)" follow the reference to client. The department responds that the section relates to notice of federal confidentiality requirements for clients receiving chemical dependency services. The federal regulation requires the client to be so notified of the information in this section regardless of whether the client has an LAR.

Regarding §414.7(b)(5), the two commenters requested adding the phrase "only if the client is competent." The commenters also observed that the subsection does not address situations in which the client is adjudicated incompetent by a court and has an LAR. The department responds that the language contained in §414.7(b)(5) is consistent with the statutory provision stated in the Texas Health and Safety Code, §611.006(a)(5). The department declines to expand a provision beyond what the Texas Legislature has set forth on this very narrow exception.

Regarding §414.7(c)(3), the same two commenters requested the deletion of "program evaluations or research." The commenters stated that the provision was misused in order to conduct a particular research study in 1993-1995. The department declines to delete the provision because the language is taken directly from §611.004(a)(3) and (b) of the Texas Health and Safety Code.

Regarding §414.7(c)(6), the two commenters requested the phrase "except that no client-identifying information shall be released without proper consent" not be deleted. The department responds that the phrase is deleted because it is in conflict with the prefacing language in (c), which states, "client-identifying information may be released *without consent...*" The department notes that although §611.004(c) of the Texas Health and Safety Code (on which the rule's language is based) states that client-identifying information "may be released only with the patient's proper consent" in an official legislative inquiry, such language conflicts with a more recently adopted statute (Texas Government Code, §552.008(b)), which allows persons participating in an official legislative inquiry to receive client-identifying information without consent provided they sign a confidentiality agreement.

Regarding §414.7(d) and (f)(1)-(2), the same two commenters suggested deleting subsection (d) and paragraphs (1) and (2) of subsection (f) because "there is no valid reason for these exceptions to informed consent." One of the commenters asked why the department would want to disclose client-identifying information without the LAR's consent. The department declines to delete the language because it would hinder the continuity of care for many clients because the majority of incompetent

clients served by the department do not have an LAR. If a client has an LAR, then it is likely that the LAR is aware of the need to disclose confidential information in order to ensure the client's continuity of care (e.g. when the client moves from a state facility to a group home contracted by a local authority, the local authority and the contract provider require medical and treatment information contained in the client's record in order to adequately serve the client). Notifying the LAR or client of the disclosure is a courtesy. If consent for the disclosure were required, then incompetent clients without an LAR would not be able to receive appropriate continuity of care because necessary client-identifying information could not be disclosed.

Regarding §414.10(c), the two commenters stated that consent should initially be required of the LAR in situations in which the client with mental retardation is deceased. The commenters also requested a simpler explanation of "related to the client within the first degree of consanguinity." The department declines to revise the language because the portion of §414.10(c) that references deceased clients with mental retardation is consistent with §595.003(a)(4)(B) of the Texas Health and Safety Code. The department notes that if a client with mental retardation has an LAR, then the LAR is most likely to be the executor or administrator of the client's estate. Regarding simplifying first degree of consanguinity, the department responds by adding language to reflect the commenters' request.

Regarding §414.12(c)(1), the same two commenters requested clarification that the reasonable fee being referenced is for copies of the client's records, not access to the client's records. The department responds that the reasonable fee is for both access and copies, although the Texas Health and Safety Code, §611.0045(i) (on which the rule's language is based), mentions only access and not copies. (The department does not support or endorse charging clients any type of fee for access to their records; however, state statute allows for such action.) The department notes that the action of charging a reasonable fee is *permissive* and not required. The department declines to provide clarifying language because such clarification could be interpreted as making the action (i.e., charging a fee) mandatory. The department directs any client who believes he/she is being charged an unreasonable fee for access to his/her records to contact Advocacy, Inc., at 1-800-315-3876.

Regarding §414.12(c)(2), the two commenters suggested including a provision to address situations in which a client's LAR has authorized an attorney to have access to the client's records. The department responds by adding language to reflect the commenters' suggestion.

Regarding the definition of "client" in §414.3(3), one commenter stated that the term needed to be changed to "individual" because "individual" is used in other department policies. The department responds that it declines to make the change because the term "client" is adequate for the purposes of this subchapter. The department notes that in other department policies the terms "person served" and "consumer" are also used.

Regarding §414.5(b), one commenter stated that her organization (Advocacy, Inc) has experienced barriers accessing information in client records generated by outside sources (e.g., commitment documents). The commenter asked if this subsection authorizes the release of such information. The department responds that the subsection authorizes the release of client

records generated by outside sources in the same manner as it authorizes the release of records generated internally.

Regarding §414.7(c)(9) and §414.8(c)(2), the same commenter requested the addition of language referencing the federal regulations which state that Advocacy, Inc. shall have access to the records of an individual with a guardian or other legal representative in the absence of the representative's authorization in which the representative, although offered assistance by Advocacy, Inc. to resolve a situation, has failed or refused to act on behalf of the individual with a disability. The department responds by adding language to reflect the commenter's request.

Regarding §414.10(c), the same commenter stated that her organization (Advocacy, Inc.) has experienced difficulty receiving client-identifying information it is authorized to receive in cases in which the client is deceased. The commenter attributed this difficulty to the language in the subchapter regarding who can give consent when the client is deceased. The department responds that the portion of the subchapter that addresses Advocacy, Inc.'s federal authorization to receive client-identifying information (§414.7(c) and §414.8(c)) is prefaced with language that states, "Client-identifying information may be disclosed *without consent*...." This prefacing language makes obtaining consent irrelevant, regardless of whether the client is living or deceased.

Regarding §414.12(b)(1), the same commenter requested language be added clarifying that the written statement must state that having access to the *specified portion of the record* would be harmful. The commenter believed that without the clarification, the professional could merely document that access to the record in general would be harmful. The department responds by adding language to reflect the commenter's request.

A mental health consumer/advocate wrote, "This is another type of abuse by the system. In our computer age, Texas providers provide our identities to every Tom, Dick, and Harry without our permission. The exception is working with the families and consumers. To succeed one must beg." The department responds that §414.7(d) allows for the exchange of client-identifying information *without consent* when the information is used between facilities, local authorities, and contract providers (a provider that delivers services pursuant to a contract with a facility or local authority). All "Texas providers" of mental health and mental retardation services, regardless of whether they contract with a facility or local authority, must comply with state and federal statutes governing disclosure of client-identifying information.

These sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and with the Texas Health and Safety Code, §595.002, which allows the board to adopt rules that it considers necessary to facilitate compliance with Chapter 595.

§414.2. Application.

(a) This subchapter applies to all facilities and state-operated community services (SOCS) of the Texas Department of Mental Health and Mental Retardation.

(b) All of the sections in this subchapter, with the exception of §414.14 of this title (relating to Depositions, Subpoenas, and Subpoenas Duces Tecum - Facility Staff Compliance), apply to all local authorities that are not SOCS.

(c) All facilities of the Texas Department of Mental Health and Mental Retardation and all local authorities are responsible for ensuring their contract providers are required to comply with this subchapter as stated in the contract.

§414.3. *Definitions.*

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

(1) Adult - A person:

(A) who is 18 years of age or older; or

(B) who is under 18 years of age and:

(i) is or has been legally married; or

(ii) whose disabilities of minority have been legally

removed.

(2) Chief executive officer or CEO - The superintendent/director of a facility or the executive director of a local authority or contract provider.

(3) Client - A person who, voluntarily or involuntarily, is seeking or receiving, or who has received mental health, mental retardation, or chemical dependency services from a facility, local authority, or contract provider.

(4) Client-identifying information - The name, address, social security number, or any information by which the identity of a client can be determined either directly or by reference to other publicly available information. The term includes, but is not limited to, a client's medical record, graphs, or charts; statements made by the client, either orally or in writing, while receiving services; photographs, videotapes, etc.; and any acknowledgment that a person is or has been a client of a facility, local authority, or contract provider. The term does not include a client-identifying number. The statutes, regulations, and rules requiring that client-identifying information be kept confidential apply regardless of the means or methods utilized for the storage and retrieval of such information.

(5) Competent - A term used to describe a person who has the ability to comprehend the effect and consequences of giving an authorization for disclosure of client-identifying information and who has not been adjudicated incompetent by a court, or for whom an order of restoration has been executed and recorded subsequent to the client's having been adjudicated incompetent.

(6) Contract provider - An individual, entity, or organization that contracts with the department, a facility, or local authority to provide mental health, mental retardation, and/or chemical dependency services.

(7) Consent - The authorization to disclose client-identifying information given by a person with such authority as described in §414.10 of this title (relating to Who Can Give Consent for Disclosure: Clients Receiving MHMR Services) or §414.11 of this title (relating to Who Can Give Consent for Disclosure: Clients Receiving Chemical Dependency Services).

(8) Department - The Texas Department of Mental Health and Mental Retardation.

(9) Facility - A state hospital, state school, state center, Central Office of the Texas Department of Mental Health and Mental Retardation.

(10) Incompetent - A term used to describe a person who:

(A) has been adjudicated incompetent by a court and for whom no subsequent order of restoration has been executed or recorded; or

(B) does not, as determined by the professional, have the ability to comprehend the effect or consequences of giving an authorization for disclosure of client-identifying information.

(11) Legal counsel - At a facility or state-operated community services, staff of the department's legal services office; at a local authority (that is not a state-operated community services) or a contract provider, the attorney(s) in its service.

(12) Legally authorized representative - A legally authorized representative means:

(A) a parent or legal guardian if the client is a minor, or a legal guardian if the client has been adjudicated incompetent to manage the client's personal affairs;

(B) an agent of the patient authorized under a durable power of attorney for health care;

(C) an attorney ad litem appointed for the client;

(D) a parent, spouse, adult child, or personal representative (executor or administrator of the client's estate) if the client is deceased; or

(E) a surrogate decision-making committee or surrogate decision-maker, as appropriate, pursuant to the Texas Health and Safety Code, Chapter 597, Subchapter C, and Chapter 405, Subchapter J of this title (relating to Surrogate Decision-Making for Community-Based ICF/MR and ICF/MR/RC Facilities).

(13) Local authority - An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.

(14) Minor - A person under 18 years of age:

(A) who is not and never has been legally married; and

(B) whose disabilities of minority have not been legally removed.

(15) Professional - A person authorized to practice medicine in any state or nation, or a person licensed or certified by the State of Texas in the determination, diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or a person reasonably believed by the client to so be.

(16) Qualified service organization - An individual, partnership, corporation, governmental agency, or any other legal entity that:

(A) provides services for chemical dependency programs, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy; and

(B) has entered into a written agreement with a program under which that entity:

(i) acknowledges that in receiving, storing, processing, or otherwise dealing with any client records from the programs, it is fully bound by the provision of this subchapter; and

(ii) if necessary, will resist in judicial proceedings any efforts to obtain access to client records except as permitted by state and federal law and this subchapter.

(17) Special needs offender - A special needs offender is:

(A) a convicted felon with mental illness or mental retardation; or

(B) an individual with mental illness or mental retardation placed on community supervision after a grant of deferred adjudication.

(18) State-operated community services (SOCS) - Community residential and nonresidential programs operated by the Texas Department of Mental Health and Mental Retardation.

(19) Subpoena - A command to appear at a certain time and place to give testimony about a certain matter.

(20) Subpoena duces tecum - A command to produce or bring items (e.g., books, papers, documents, records) at a certain place and time.

§414.4. Statutes and Federal Regulations Governing Disclosure.

(a) State statutory provisions governing disclosure of client-identifying information concerning clients receiving mental health and mental retardation services are contained in §576.005 and Chapter 611 of the Texas Health and Safety Code.

(b) The provisions for disclosure of client-identifying information concerning clients receiving mental retardation services are contained in the Persons with Mental Retardation Act, Texas Health and Safety Code, Chapter 595. The provisions described in §576.005 and Chapters 595 and 611 of the Texas Health and Safety Code should be interpreted together in reaching a determination regarding the disclosure of client-identifying information concerning clients receiving mental retardation services.

(c) Texas Human Resources Code, §48.0385, establishes authority for the Texas Department of Protective and Regulatory Services (TDPRS) to have access to client records necessary to conduct investigations into allegations of abuse and neglect of persons served.

(d) Texas Civil Statutes, Article 4512g-1, allows for the release of information concerning the mental health treatment of a sex offender (as defined by Code of Criminal Procedure, Article 42.12, Section 9) to a criminal justice agency or local law enforcement authority.

(e) The Secretary of the United States Department of Health and Human Services has promulgated extensive regulations governing the disclosure of records of clients receiving chemical dependency services as described in 42 Code of Federal Regulations Part 2.

(f) The Secretary of the United States Department of Education has promulgated extensive regulations governing the disclosure of educational records of school-age children as described in 45 Code of Federal Regulations 99ff. State statutory provisions governing the disclosure of a client's educational records are described in the Texas Health and Safety Code, §595.005(c). Any questions concerning the disclosure of such educational records should be referred to legal counsel.

(g) The Texas Open Records Act, Texas Government Code, Chapter 552, provides that all information collected, assembled, or

maintained by governmental bodies, and agencies operating in part or whole with state funds, pursuant to law or ordinance in connection with the transaction of official business is public information and available to the public during normal business hours; however, the act does set out certain exceptions. One such exception is information deemed confidential by law, such as records which directly or indirectly identify a client, former client, or prospective client.

(h) The Texas Health and Safety Code, §614.017, allows for the exchange of client-identifying information of special needs offenders between the state agencies responsible for providing continuity of care if it furthers the purposes of the Texas Council on Offenders with Mental Impairments, Texas Health and Safety Code, Chapter 614.

§414.5. General Provision for Release of Client-Identifying Information.

(a) All requests for client-identifying information by persons or organizations, other than employees and agents of the department or employees of local authorities or contract providers who need the information for the purpose of fulfilling their duties, should be made to the CEO (or designee) of the facility, local authority, or contract provider (or designee) from which the client receives or has received services. Employees and agents of the Texas Department of Protective and Regulatory Services shall direct inquiries and requests for client records to the CEO of the facility, local authority, or contract provider.

(b) Any records received from another governmental or private source that become part of the client's record may be released under the guidelines established in this subchapter.

(c) Except as otherwise described in these rules, an inquiry as to whether a person is a client of a facility, local authority, or contract provider, should not be affirmed or denied, but should be answered by stating that information cannot be given without proper authorization.

(d) Verbal consent to disclosure of client-identifying information is not adequate. In no case should identifying information be released to the news media or to friends and family of a client:

(1) without prior written consent in accordance with this subchapter; or

(2) unless authorized by law (e.g., Texas Health and Safety Code, §595.010).

(e) Identifying information regarding other clients must be expunged from records released.

(f) The requirements in this subchapter for the disclosure of client-identifying information for clients receiving chemical dependency services apply to all clients who have a chemical dependency diagnosis, prognosis, or are receiving chemical dependency services even if they are also receiving mental health and/or mental retardation services. Should an individual be diagnosed as having mental illness or mental retardation in addition to chemical dependency, the portions of the individual's record which refer to mental illness or mental retardation may be released under the mental health or mental retardation requirements of this subchapter if no mention or reference is made about the chemical dependency diagnosis, treatment, or record.

§414.6. Notice of Federal Confidentiality Requirements for Clients Receiving Chemical Dependency Services.

(a) At the time of admission or as soon thereafter as the client is capable of rational communication, staff shall:

(1) communicate to the client that federal law and regulations protect the confidentiality of records for clients receiving chemical dependency services records; and

(2) give the client a written summary of the federal law and regulations.

(b) The written summary of the federal law and regulations (42 CFR Part 2) must include:

(1) a citation to the federal law and regulations;

(2) a description of the limited circumstances under which a program may disclose outside the program, information identifying a client as chemically dependent;

(3) a description of the limited circumstances under which a program may acknowledge that an individual is present at a program;

(4) a description of the circumstances under which records for a client receiving chemical dependency services may be used to initiate or substantiate criminal charges against a client;

(5) a statement that information related to a commission of a client's crime on the premises of the program against personnel of the program is not protected;

(6) a statement that the federal law and regulations do not prohibit a program from giving a client access to his or her own records;

(7) a statement of the criminal penalty for violation of the federal law and regulations;

(8) a statement that reports of suspected child abuse and neglect made under state law to appropriate state or local authorities are not protected; and

(9) an address where suspected violations of the federal law and regulations may be reported.

(c) A copy of a sample notice form that meets the requirements of subsection (b) of this section, which is required to be given to clients receiving chemical dependency services, is referenced as Exhibit A in §414.15 of this title (relating to Exhibits).

§414.7. When Consent for Disclosure is not Required: Clients Receiving MHMR Services.

(a) When consent has been previously given. Consent to disclosure of client-identifying information is not required if:

(1) proper consent has been obtained previously and has not been revoked;

(2) the duration of the consent has not expired; and

(3) the specifications of the consent (what is to be released, to whom, for what purpose) are the same.

(b) When required by certain judicial and administrative proceedings. Client-identifying information may be disclosed without consent in:

(1) a judicial or administrative proceeding brought by the client or the client's legally authorized representative against a professional, including malpractice proceedings;

(2) a license revocation proceeding in which the client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3) a judicial or administrative proceeding in which the client waives his or her right in writing to the privilege of

confidentiality of information or when the client's legally authorized representative, acting on the client's behalf, submits a written waiver to the confidentiality privilege;

(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the client;

(5) a judicial proceeding if the judge finds that the client, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-order examination, except that those communications may be disclosed only with respect to issues involving the client's mental or emotional health;

(6) a judicial proceeding affecting the parent-child relationship;

(7) any criminal proceeding subject to a subpoena issued by the court;

(8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as defined by the Texas Health and Safety Code, §242.002(6);

(9) a judicial proceeding relating to a will, if the client's physical or mental condition is relevant to the execution of the will;

(10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under Chapter 462, 574, or 593 of the Texas Health and Safety Code; or

(11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(c) When required in other than court proceedings. Client-identifying information may be disclosed without consent:

(1) to government agencies if required or authorized by law (for example, to the Texas Department of Protective and Regulatory Services in cases of client/child abuse; to a member of a child fatality review team who is investigating the death of a child in accordance with the Texas Family Code, Chapter 264);

(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client;

(3) to qualified personnel for management audits, financial audits, program evaluations, or research, except that personnel who receive the information may not directly or indirectly or otherwise disclose the identity of a client in a report or in any other manner;

(4) to persons, corporations, or governmental agencies involved in the paying or collecting of fees for mental or emotional health services provided by a professional;

(5) to other professionals and personnel under the professionals' direction who are participating in the diagnosis, evaluation, and treatment of the client;

(6) to persons participating in an official legislative inquiry regarding state hospitals or state schools in accordance with the Texas Government Code, §552.008 (this exception only applies to records created by employees of the state hospitals or state schools);

(7) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(8) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of clients;

(9) to Advocacy, Incorporated, in the investigation of a complaint by or on behalf of a client in accordance with 42 USC §10806 or §6042(a)(2)(I) (Protection and Advocacy of Individuals with Mental Illness and Protection and Advocacy of Individuals with Developmental Disabilities). Excepted from this disclosure without consent are records subject to attorney/client privilege, e.g., records of an investigation conducted at the request of a departmental attorney in preparation for potential litigation;

(10) to an employee or agent of the treating professional who requires the mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information;

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to §4.01(e), Medical Liability and Insurance Improvement Act, Texas Civil Statutes, Article 4590i; and

(12) to health care personnel of a penal or other custodial institution in which the client is detained if the disclosure is for the sole purpose of providing health care to the client.

(d) When used between facilities, local authorities, and contract providers. Client-identifying information may be disclosed without consent when it is used between department facilities, local authorities, and contract providers only if:

(1) the client or legal guardian has been informed that the records may be exchanged at the time of or prior to release;

(2) the client or legal guardian is informed of the purpose of the release, e.g., to facilitate continuing care for the client; and

(3) this advisement is documented in the client's record, dated, and signed by the client or legal guardian and staff.

(e) When used by an attorney ad litem. Client-identifying information may be disclosed without consent to the attorney ad litem representing the client in legal process.

(f) When used for continuity of care of special needs offenders. In accordance with the Texas Health and Safety Code, §614.017, to provide continuity of care for a special needs offender (as defined), client-identifying information (i.e., identity, needs, treatment, social, criminal and vocational history, and medical and mental health history) concerning the offender may be disclosed and received without consent among the following agencies, or a division within the following agencies, or a person with an agency relationship with a following agency, or a person who contracts with a following agency:

(1) Texas Department of Criminal Justice and its divisions, which are:

(A) Community Justice Assistance Division;

(B) Parole Division;

(C) Institutional Division;

(D) State Jail Division; and

(E) the office of the Texas Council on Offenders with Mental Impairments;

(2) a community supervision and corrections department;

(3) Texas Department of Human Services;

(4) Texas Department on Aging;

(5) Texas Rehabilitation Commission;

(6) Texas Department of Health;

(7) Texas Commission for the Blind;

(8) Texas Commission for the Deaf and Hard of Hearing;

(9) Texas Department of Mental Health and Mental Retardation; and

(10) a local authority.

§414.8. *When Consent for Disclosure is not Required: Clients Receiving Chemical Dependency Services.*

(a) When consent has been previously given. Consent to disclosure of client-identifying information is not required if:

(1) proper consent has been obtained previously and has not been revoked;

(2) the duration of the consent has not expired; and

(3) the specifications of the consent (what is to be released, to whom, for what purpose) are the same.

(b) When required by certain court proceedings. Client-identifying information may be disclosed without consent pursuant to a specific court order which meets the requirements of the Health and Human Services regulations set forth in 42 Code of Federal Regulations §2.61, et seq. A subpoena that does not meet such requirements is not sufficient to allow disclosure of the information without consent.

(c) When required in other than court proceedings. Client-identifying information may be disclosed without consent:

(1) in accordance with the Health and Human Services regulations (42 Code of Federal Regulations Part 2):

(A) to medical personnel to meet a medical emergency;

(B) to the United States Food and Drug Administration when it is necessary to notify a client of a dangerous drug in accordance with 42 CFR §2.51;

(C) for research, audit, and evaluation purposes, subject to the limitations described in 42 CFR §2.52; and

(D) to state or federal governmental agencies performing research, audit, or evaluation in accordance with 42 CFR §2.53;

(2) to Advocacy, Incorporated, in the investigation of a complaint by or on behalf of a client in accordance with 42 USC §10806 or §6042(a)(2)(I) (Protection and Advocacy of Individuals with Mental Illness and Protection and Advocacy of Individuals with Developmental Disabilities). Excepted from this disclosure without consent are records subject to attorney/client privilege, e.g., records of an investigation conducted at the request of a departmental attorney in preparation for potential litigation;

(3) to report information about suspected child abuse or neglect to state or local authorities under state law; and

(4) to a member of a child fatality review team who is investigating the death of a child in accordance with the Texas Family Code, Chapter 264.

(d) When used between facilities, state-operated community services, and personnel of the department. Consent is not required for disclosure of client-identifying information between department facilities, state-operated community services, and personnel of the department having a need for the information in connection with their duties. This subsection does not include disclosure of information by department personnel to personnel of local authorities that are not state-operated or contract providers, unless the local authority or contract provider is also a qualified service organization as defined in §414.3 of this title (relating to Definitions).

(e) Any information regarding the application for chemical dependency services of a minor under the age of 16 years may be communicated to the parent, guardian, or other person authorized under Texas law to act on the minor's behalf if the CEO determines that the minor, because of a mental or physical condition, lacks the capacity to make a rational decision on whether to consent to the notification of his or her parent, guardian, or other person authorized under Texas law to act on the minor's behalf and the situation poses a substantial threat to the physical well-being of any person which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under Texas law to act on the minor's behalf.

(f) Consent is not required for disclosure of client-identifying information between a program and a qualified service organization of information needed by the organization to provide services to the program.

§414.9. Form of Consent: Clients Receiving MHMR and Chemical Dependency Services.

(a) A valid consent form authorizing the disclosure of client-identifying information concerning a client contains the following information:

- (1) the name of the client;
- (2) the name of the organization that is to make the disclosure;
- (3) the person or organization to whom the client-identifying information is to be disclosed;
- (4) the purpose of the disclosure;
- (5) a description of the client-identifying information to be disclosed and any limitations on disclosure;
- (6) a statement that the consent is subject to revocation at any time except to the extent that the organization which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment or services in reliance on a valid consent to disclose information to a third-party payor;
- (7) the date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given;
- (8) the signature of the client or authorized person as allowed by §414.10 of this title (relating to Who Can Give Consent for Disclosure: Clients Receiving MHMR Services) and §414.11 of this title (relating to Who Can Give Consent for Disclosure: Clients Receiving Chemical Dependency Services); and
- (9) the date the consent form was signed.

(b) A copy of a sample consent form containing the information referred to in subsection (a) of this section, which is required for use by facilities, is referenced as Exhibit B in §414.15 of this title (relating to Exhibits).

(c) A disclosure may not be made on the basis of a consent which:

- (1) has expired;
- (2) does not comply with subsection (a) of this section;
- (3) is known to have been revoked; or
- (4) is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

(d) Consent to be interviewed, photographed, filmed, or recorded is documented on the Consent for Publication form, referenced as Exhibit C in §414.15 of this title (relating to Exhibits).

§414.10. Who Can Give Consent for Disclosure: Clients Receiving MHMR Services.

(a) Adult clients.

(1) If a client is a competent adult, then the client is the only person who can authorize and consent to disclosure of client-identifying information.

(2) If the client is an incompetent adult, then the legally authorized representative (LAR) is the only person who can authorize and consent to disclosure of client-identifying information.

(b) Minor clients.

(1) If the client is a minor receiving mental retardation services, then the client does not have the capacity to consent to disclosure of client-identifying information. Only a parent, guardian of the person, managing conservator, or possessory conservator of the minor client can authorize and consent to disclosure of client-identifying information to any third party other than an attorney representing the client.

(2) If the client is a minor under 16 years of age receiving mental health services, then the client does not have the capacity to consent to disclosure of client-identifying information. Only a parent, guardian of the person, managing conservator, or possessory conservator of the minor client can authorize and consent to disclosure of client-identifying information to a third party other than an attorney representing the client.

(3) If the client is a competent minor at least 16 years of age but under 18 years of age receiving voluntary mental health services, then the client can unilaterally authorize and consent to disclosure of client-identifying information. The parent, managing conservator, or possessory conservator of such a minor client also can unilaterally authorize and consent to disclosure of client-identifying information.

(4) If the client is a minor at least 16 years of age but under 18 years of age receiving court-ordered mental health services, then only a parent, guardian of the person, managing conservator, or possessory conservator can authorize and consent to disclosure of client-identifying information to a third party other than an attorney ad litem representing the client.

(5) A possessory conservator has the right of access to medical, dental, and educational records of a minor to the same extent as the managing conservator. However, before releasing records to the possessory conservator, all references in the records to the place of residence of the managing conservator must be deleted.

(c) Deceased clients. If the client is deceased, consent for disclosure of client-identifying information can be given by the client's personal representative, usually the executor or administrator of the client's estate. For clients with mental retardation, if an executor or administrator has not been appointed, consent can be given by the client's spouse, or if the client was not married, by an adult related to the client within the first degree of consanguinity (i.e., parent or child).

§414.12. Disclosure to a Client of Information Contained in His or Her Records.

(a) Records of clients receiving mental retardation services. The content of a client's record is to be made available to the client upon request; however, parts of the client's record may be withheld from the client if the qualified professional responsible for supervising the client's habilitation determines that access by the client to parts of the record would not be in the client's best interest. The determination that access by the client to parts of his/her record would not be in the client's best interest must be made within three working days of the client's request. The reasons for the determination must be documented in the client's record.

(b) Records of clients receiving mental health and chemical dependency services. The content of a client's record is to be made available to the client upon request; however, parts of the client's record may be withheld from the client if a professional determines that access by the client to parts of the record would not be in the client's best interest. The determination that access by the client to parts of his/her record would not be in the client's best interest must be made within three working days of the client's request. (Notwithstanding the Medical Practice Act, Texas Civil Statutes, Section 5.08, Article 4495b, this subsection applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug abuse/addiction.)

(1) Pursuant to the Texas Health and Safety Code, §611.0045, if a professional denies a client receiving mental health or chemical dependency services access to any portion of the client's record, then the professional shall give the client a signed and dated written statement that having access to the specified portion of the record would be harmful to the client's physical, mental, or emotional health. The professional shall include a copy of the written statement in the client's record. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(2) The professional who denies access to a portion of a record under this subsection shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the client of the denial and document the denial as prescribed by subsection (b)(1) of this subsection.

(3) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the client selects the other professional to treat the client for the same or a related condition as the professional denying access.

(4) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the client that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the client's commitment.

(5) If a summary or narrative of a confidential record is requested by the client or legally authorized representative acting on the client's behalf, then the professional shall prepare the summary or narrative within 10 working days.

(c) Records of clients receiving mental retardation, mental health, or chemical dependency services.

(1) If requested by the client, the professional or other entity who has possession or control of the client's record shall grant access to any portion of the record to which access is not specifically denied under subsection (a) or (b) of this section within three working days and may charge a reasonable fee.

(2) When a legally authorized representative (LAR) requests access to the client's records or when a client or a client's LAR has authorized an attorney to have access to the client's records, the records shall be made available to the LAR or attorney. If it has been determined that access by the client to parts of the record would not be in the client's best interest, this fact shall be brought to the attention of the LAR or attorney, but the LAR or attorney shall be permitted to view such parts.

§414.14. Depositions, Subpoenas, and Subpoenas Duces Tecum - Facility and SOCS Staff Compliance.

(a) If consent has been given, the facility/SOCS may testify in court or by deposition or affidavit on matters relating to the client or make available records in reference to the client when asked to do so.

(b) In civil proceedings in which consent has not been given.

(1) For clients receiving mental health and mental retardation services.

(A) A court-issued subpoena and/or subpoena duces tecum is sufficient to permit the release of records if the request is made for records pursuant to Texas Rules of Civil Evidence, Rule 510(d).

(B) A court-issued subpoena and/or subpoena duces tecum is sufficient to permit the release of records if the request is made for records pursuant to any judicial or administrative situation described in §414.7(b) of this title (relating to When Consent for Disclosure is not Required: Clients Receiving MHMR Services).

(C) Every effort should be made by the facility/SOCS to cooperate and work out an arrangement for written consent that is satisfactory to all concerned and which adequately protects the rights of the client. If the facility/SOCS is unable to work out a satisfactory arrangement, then legal counsel should be contacted immediately and its advice sought concerning the proper manner in which to proceed.

(2) For clients receiving chemical dependency services. Client-identifying information may be disclosed without consent pursuant to a specific court order which meets the requirements of the Health and Human Services regulations set forth in 42 Code of Federal Regulations §2.61, et seq. A subpoena that does not meet such requirements is not sufficient to allow disclosure of the information without consent.

(c) In criminal proceedings in which consent has not been given.

(1) For clients receiving mental health and mental retardation services.

(A) A court-issued subpoena is sufficient to permit the release of records of a client who is a defendant, victim, or witness.

(B) A court-issued subpoena is sufficient to permit the release of records if the request is made for records pursuant to a judicial or administrative situation described in §414.7(b) of this title (relating to When Consent for Disclosure is not Required: Clients Receiving MHMR Services).

(2) For clients receiving chemical dependency services. Client-identifying information may be disclosed without consent pursuant to a specific court order which meets the requirements of the Health and Human Services regulations set forth in 42 Code of Federal Regulations §2.61, et seq. A subpoena that does not meet such requirements is not sufficient to allow disclosure of the information without consent.

(d) Whenever there is doubt as to the proper procedure to be followed in litigation, the subpoenaed party should immediately contact legal counsel.

§414.15. Exhibits.

The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668.

(1) Exhibit A - Sample Notice Form: Confidentiality of Records of Clients Receiving Chemical Dependency Services;

(2) Exhibit B - Authorization and Consent for the Disclosure of Clinical Record Information (Form MHRS 9-13); and

(3) Exhibit C - Consent for Publication.

§414.16. References.

Reference is made to the following state and federal statutes and rules of the department:

(1) Texas Health and Safety Code, Chapters 462, 574, 593, 595, 597, 611, and 614; §576.005; §595.005(c); §242.002(6); and §614.017;

(2) Texas Human Resources Code, §48.0385;

(3) Texas Civil Statutes, Article 4512g-1;

(4) Medical Practice Act, Texas Civil Statutes, Section 5.08, Article 4495b;

(5) Medical Liability and Insurance Improvement Act, Texas Civil Statutes, Article 4590i, §4.01(e);

(6) Code of Criminal Procedure, Article 42.12, Section 9;

(7) 42 Code of Federal Regulations Part 2, §2.51, §2.52, §2.53, and §2.61;

(8) 45 Code of Federal Regulations 99ff;

(9) Texas Government Code, Chapter 552;

(10) Texas Family Code, Chapter 264; and

(11) Texas Rules of Civil Evidence, Rule 510(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 1998.

TRD-9811024

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

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

◆ ◆ ◆
Subchapter K. Criminal History Clearances

25 TAC §§414.501-414.509

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§414.501 - 414.509 of new Chapter 414, Subchapter K, concerning criminal history clearances. Sections 414.502 - 414.507 are adopted with changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23TexReg3800-3803). Sections 414.501, 414.508, and 414.509 are adopted without changes. The repeals of §§404.301 - 404.309 of Chapter 404, Subchapter H, concerning the same, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new sections implement Senate Bills 190 and 262 of the 75th Legislature, which amend §250.006 of the Texas Health and Safety Code by adding offenses for which a conviction constitutes an absolute bar to employment with or volunteer status at TDMHMR, community MHMR centers, and their contract providers of residential services. The provisions of this subchapter implement a system which is designed to protect individuals receiving inpatient/residential services funded by the department. Barring employment and volunteer status to persons convicted of certain offenses allows the department, community centers, and other applicable providers to be accountable for the protection of the individuals they serve.

Language in §414.502 states that the subchapter does not apply to board members and advisory committee members, with the exception of public responsibility committee (PRC) members. PRC members are subject to criminal history clearances because their duties require frequent, direct interaction with individuals served by facilities and community centers. A definition of "volunteer" is added. The statutory cite for the offense listed in §414.504(g)(7) is corrected. The term facility is added to §414.505(a) and (b) when referencing for whom a provider contracts. The requirement to develop written policies and procedures in §414.506(b) is extended to providers. A provision is added to §414.506(b) requiring the written policies and procedures to include a mechanism for determining the accuracy of reports to the extent possible and for obtaining complete information. Language is added to §414.507(c)(1) clarifying while adverse personnel action may not be taken on information pertaining to arrest warrants or wanted persons notices, that the employee/volunteer may be reassigned to a non-direct care area until dissolution of the matters relating to the arrest warrant or wanted persons notice.

Written public comment was received from the Texas Council of Community Mental Health and Mental Retardation Centers, Austin; Mental Health and Mental Retardation Authority of Harris County, Houston; the Parent Association for the Retarded of Texas, Inc.(PART), Austin; and the parent of a state school resident, Garland.

One commenter noted that the department's policy of not requiring criminal history clearances for advisory committee members is not articulated in the proposed rules. Another commenter noted the absence of a definition of "volunteer" and questioned if members of a community center's board

of trustees, advisory committees, and public responsibility committee were considered volunteers, and if the rules apply to them. One of the commenters provided language for a definition of "volunteer" and suggested stating in the application section that the rules do not apply to advisory committee members. The department responds by adding a definition of "volunteer" and stating in the application section that the rules do not apply to board members and advisory committee members, with the exception of public responsibility committee (PRC) members. PRC members are subject to criminal history clearances because their duties require frequent, direct interaction with individuals served by facilities and community centers.

Regarding the definition of "provider," two commenters found the phrase "who have been ... discharged from a facility or community center" very disturbing. The commenters stated that, previously when asked what the criteria is for discharge, the department responded that the criteria for discharge has not been determined. The commenters stated that they could not locate the term in their review of the statutes and asked from which document is the department using the term. The department responds that the phrase is taken from the Texas Government Code, §411.115(b)(1)(E) in its description of the contractual entities for which the department or community center has authority to require criminal history clearances of its applicants and employees.

Regarding criminal history clearances of professional clinical interns in §414.504(c)(2), the same two commenters requested that the memorandum of understanding or affiliation agreement (MOA) between the facility/community center and the university/college require the criminal history clearances be conducted through the department. The department responds that because professional clinical interns are neither employees nor volunteers it does not have the authority to require what the commenters have requested. The department notes that subsection (c) mandates that the MOU state that the university/college is responsible for conducting a reasonable background check of the intern. In an effort to facilitate a "reasonable background check," the MOA may include a provision by which the facility/community center actually conducts the criminal history clearances; however, the decision to include this provision is made by the facility/community center and university/college.

Regarding §414.504(d), the commenters recommended adding the requirement for the employer to err on the side of protection of consumers when considering other criminal offenses for which a conviction would be a contraindication to employment or volunteer status. The department responds that language in state statute and this subchapter was written to allow the maximum amount of flexibility for an employer to err on the side of caution.

The same two commenters expressed disbelief that a conviction of rape, other types of assaultive offenses, public lewdness, or indecent exposure was not included in the list of offenses which would bar employment. The commenter stated that wanted persons' notices, arrest warrants, temporary or permanent protective orders, and deferred adjudications, in addition to convictions should be an absolute bar to employment or volunteer status. The commenter also stated that the department should add these items to its 1999 legislative list. The department responds that the types of criminal offenses for which a conviction would bar employment is contained in state statute. State statute also allows employers to consider other offenses, such

as public lewdness, indecent exposure, and driving while intoxicated, to be a contraindication to employment or volunteer status. Incidentally, the department notes that rape is sexual assault, which is an absolute bar to employment or volunteer status. Regarding the addition of wanted persons' notices, arrest warrants, etc., the department declines to include the additional items suggested by the commenters because to do so would go beyond its statutory authorization.

Regarding §414.507(c)(1), the same commenters requested language that required removing the employee or volunteer from contact with consumers until dissolution of the matters relating to the arrest warrant or wanted persons' notice. The department responds by adding language that allows for the employee/volunteer to be reassigned to a non-direct care area until dissolution of the matters relating to the arrest warrant or wanted persons' notice.

These sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Texas Health and Safety Code, §250.002(d) and §533.007, which permit TDMHMR to adopt rules relating to the processing and use of criminal history information.

§414.502. Application.

(a) This subchapter applies to:

- (1) facilities (which includes the department's Central Office in Austin);
- (2) community centers; and
- (3) providers that contract with facilities or community centers to deliver residential services to individuals with mental illness or mental retardation, including residences certified by the intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) program that are owned and operated by a community center.

(b) This subchapter does not apply to residences certified by the ICF/MR or ICF/MR/RC program that are owned by a community center but operated under contract by a private provider, or that are privately owned and operated. Criminal history clearances are conducted for such residences in accordance with rules of the Texas Department of Human Services (TDHS) in 40 TAC §§76.101- 76.106.

(c) This subchapter does not apply to:

- (1) entities and providers that must otherwise conduct criminal history clearances as required by the Texas Health and Safety Code, Chapter 250;
 - (2) members of the Texas MHMR Board;
 - (3) members of a community center's board of trustees;
- and
- (4) members of a facility or community center's advisory committees, with the exception of the public responsibility committee (PRC).

§414.503. Definitions.

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

(1) Applicant - At the employer's discretion, a person:

- (A) who has applied for a position as an employee or volunteer;

(B) who is one of a select number of final candidates for a position as an employee or volunteer; or

(C) to whom the employer intends to offer a position as an employee or volunteer.

(2) Community center - A community mental health and mental retardation center established under the Texas Health and Safety Code, Title 7, Chapter 534.

(3) Conviction - The adjudication of guilt, plea of guilty or nolo contendere, or the assessment of probation or community supervision for a violation of the Penal Code.

(4) Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

(5) Facility - Any state hospital, state school, state-operated community services (SOCS), or state center operated by the department, or the department's Central Office in Austin.

(6) IS Coordinator, Criminal History Record Information (CHRI) - The person responsible for receiving criminal history requests and FBI cards, processing them through the appropriate agencies, and forwarding the reports to the requestor.

(7) Provider - Any entity or person which contracts with a facility or community center to deliver residential services to individuals with mental illness or mental retardation who have been furloughed or discharged from a facility or community center as described in the Texas Government Code, §411.115(b). This does not include private ICF/MR or ICF/MR/RC providers; TDHS is responsible for conducting criminal history clearances for those entities.

(8) Professional clinical intern - A person who is enrolled in a formal clinical rotation at a university/college in a professional training program accredited by the appropriate licensing authority or board of examiners, or is engaged in a recognized graduate level, clinical professional degree program. Professional degree programs include, but are not limited to, nursing, pharmacy, physical therapy, occupational therapy, medicine, clinical psychology, social work, and dentistry.

(9) Volunteer - An individual who provides time and/or services to persons served at a facility, community center, or provider without compensation from the facility, community center, or provider other than reimbursement for actual expenses.

§414.504. Pre-employment Criminal History Clearance.

(a) A facility, community center, or provider must conduct a pre-employment criminal history clearance of all applicants for employment or volunteer status.

(b) Providers that request criminal history record information through a private agency and providers that must otherwise conduct criminal history clearances as required by the Texas Health and Safety Code, Chapter 250, must provide evidence of compliance with the Texas Health and Safety Code, Chapter 250, to the facility or community center with which it contracts.

(c) For professional clinical interns, a memorandum of understanding or affiliation agreement (MOA) must exist between the facility or community center and the university/college that specifically states that:

(1) responsibility for the care of individuals receiving services is retained by the facility or community center; and

(2) the university/college is responsible for conducting a reasonable background check of the intern. To facilitate this check,

the university/college may elect to include a provision in the MOA which requires the department to conduct a criminal history clearance.

(d) An applicant who has been convicted of any of the criminal offenses listed in subsection (g) of this section may not be employed or assigned volunteer status by the facility, community center, or provider. Each facility, community center, or provider may determine other criminal offenses, not listed in subsection (g) of this section, for which a conviction may be considered a contraindication to employment or volunteer status at that entity.

(e) The facility, community center, or provider must inform applicants in writing at the time that application is made:

(1) that a pre-employment/volunteer criminal history clearance will be conducted;

(2) of the types of criminal offenses for which a conviction would bar employment or volunteer status; and

(3) that conviction of other types of criminal offenses may be considered a contraindication to employment or volunteer status at that entity.

(f) An applicant may be employed on a temporary or interim basis without a criminal history clearance if an emergency exists in which there is a risk to the health and safety of individuals receiving services as a result of unfilled positions or in which the operations of the organization are severely impaired as determined by the chief executive officer of the facility, community center, or provider.

(1) The applicant shall furnish the employer with an affidavit stating that the applicant has not been convicted of any of the criminal offenses listed in subsection (g) of this section or any criminal offense which that employer has determined is a contraindication to employment. The affidavit shall be kept in the applicant's file. A sample affidavit may be obtained by contacting Human Resource Services, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668.

(2) Within 72 hours of the time the person is employed on a temporary or interim basis, the facility, community center, or provider shall request a criminal history clearance of that person as described in §414.505 of this title (relating to Requesting a Criminal History Clearance.)

(3) If the results of the criminal history clearance reveal a conviction for any of the criminal offenses listed in subsection (g) of this section or for any criminal offense which the employer has determined is a contraindication to employment, the facility, community center, or provider shall dismiss the person as unemployable immediately upon receipt of the criminal history report.

(4) An applicant may not receive volunteer placement on a temporary or interim basis pending a criminal history clearance.

(g) Consistent with the Texas Health and Safety Code, §250.006, convictions of criminal offenses which constitute an absolute bar to employment include:

- (1) criminal homicide (Penal Code, Chapter 19);
- (2) kidnapping and false imprisonment (Penal Code, Chapter 20);
- (3) indecency with a child (Penal Code, §21.11);
- (4) sexual assault (Penal Code, §22.011);
- (5) aggravated assault (Penal Code, §22.02);

- (6) injury to a child, elderly individual, or disabled individual (Penal Code, §22.04);
- (7) abandoning or endangering a child (Penal Code, §22.041);
- (8) aiding suicide (Penal Code, §22.08);
- (9) agreement to abduct from custody (Penal Code, §25.031);
- (10) sale or purchase of a child (Penal Code, §25.08);
- (11) arson (Penal Code, §28.02);
- (12) robbery (Penal Code, §29.02); and
- (13) aggravated robbery (Penal Code, §29.03).

(h) Consistent with the Texas Government Code, §411.115(e), the facility, community center, or provider shall destroy conviction information from the Texas Department of Public Safety (TDPS) or the Federal Bureau of Investigation (FBI), whether obtained through the department or a private agency, after an employment/volunteer decision has been made or personal action has been taken.

§414.505. Requesting a Criminal History Clearance.

(a) Facilities must submit criminal history clearance requests to the IS Coordinator, Criminal History Records Information (CHRI) in the department's Central Office in Austin. Community centers and providers (through the facility or community center with which it contracts) may submit requests to the IS Coordinator, Criminal History Records Information (CHRI) or may choose to contract with a private agency, as permitted by the Texas Health and Safety Code, 250.002(b), to conduct criminal history clearances.

(b) The department may charge a fee to community centers and providers (through the facility or community center with which it contracts) which equals the fee that TDPS or the FBI charges the department to conduct a criminal history clearance.

(c) The Criminal History Record Information Request Form HR-44 is used to submit requests to the IS Coordinator, CHRI, for criminal history clearances. The request is submitted via confidential electronic mail, confidential fax, or mail. Copies of the HR-44 form may be obtained by contacting TDMHMR, IS Coordinator, Criminal History Records Information, P.O. Box 12668, Austin, Texas 78711-2668. The form may be duplicated.

(d) Applicants who have lived outside the State of Texas at any time during the two years preceding the application for employment/volunteer status are cleared through the FBI using a complete set of fingerprints on the official FBI card which may be obtained from Human Resource Services, TDMHMR, P.O. Box 12668, Austin, TX 78711-2668. There is a charge for obtaining this information.

§414.506. Criminal History Report.

(a) The IS Coordinator, Criminal History Records Information (CHRI) will forward criminal history reports immediately to the requesting facility or community center.

(b) Facilities, community centers, and providers will have written policies and procedures consistent with this subchapter that describe how information obtained through a criminal history clearance will be processed and later destroyed. The policies and procedures must include:

- (1) processes that protect the confidentiality of criminal history reports pursuant to the Texas Health and Safety Code, §250.007;
- (2) the notification of an applicant if a conviction is revealed;
- (3) a mechanism for determining the accuracy of reports to the extent possible and for obtaining complete information; and
- (4) information on how an applicant can address inaccuracies of a report (i.e., the opportunity to be heard by Texas Department of Public Safety (TDPS), pursuant to Texas Health and Safety Code, §250.005(b)) if the applicant believes he/she has been unjustly denied employment or volunteer status as a result of an inaccurate criminal history report.

(c) An applicant whose report identifies a conviction of any of the criminal offenses listed in §414.504(g) of this title (relating to Pre-employment Criminal History Clearance) or a conviction of any criminal offense which the employer considers to be a contraindication to employment or volunteer status must be notified in writing:

- (1) of the TDPS or FBI report of the conviction;
- (2) of the applicant's ineligibility for employment or volunteer status because of the conviction; and
- (3) how to address inaccuracies of a report (i.e., the opportunity to be heard by Texas Department of Public Safety (TDPS), pursuant to Texas Health and Safety Code, §250.005(b)) if the applicant believes he/she has been unjustly denied employment or volunteer status as a result of an inaccurate criminal history report.

§414.507. Self-Reporting and Subsequent Criminal History Checks.

(a) Following employment with or attaining volunteer status at a facility, community center, or provider, all employees and volunteers shall report to a person designated by that facility, community center, or provider any subsequent convictions or offenses for which they are charged.

(b) A facility, community center, or provider may conduct criminal history checks on any employee or volunteer at any time it deems appropriate. Requests by a facility for subsequent criminal history checks must be coordinated with the director of human resource services at the department's Central Office prior to submission.

(c) Each facility, community center, and provider shall develop written policies and procedures consistent with this subchapter describing how it will respond to information obtained through self-reporting and subsequent criminal history checks.

(1) Pursuant to the Texas Health and Safety Code, §533.007(i), adverse personnel action may not be taken if the information received pertains to arrest warrants or wanted persons' notices. However, the employee/volunteer may be reassigned to a non-direct care area until dissolution of the matters relating to the arrest warrant or wanted persons' notice.

(2) If the information reflects a conviction for an offense:

(A) listed in §414.504(g) of this title (relating to Pre-employment Criminal History Clearance), then consideration may be given to any contention by the employee/volunteer concerning errors of fact or identity in the report. While the employee/volunteer is attempting to rectify the accuracy of the information, the employee/volunteer shall be removed from direct contact with individuals receiving services. If the employee or volunteer fails to rectify the

accuracy of the information, as provided by Texas Health and Safety Code, §250.005(b), then the facility, community center, or provider shall immediately dismiss the employee or volunteer.

(B) considered to be a contraindication to employment or volunteer status, then consideration may be given to mitigating circumstances.

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 July 13, 1998.

TRD-9811022

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: August 3, 1998

Proposal publication date: April 17, 1998

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



TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Catastrophe Property Insurance Association

28 TAC §5.4007, §5.4008

The Commissioner of Insurance adopts amendments to §5.4007, and §5.4008, concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association (Association). The amendments are adopted without change to the proposed text published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5932), and the text will not be republished. The Commissioner adopted the amendments in a public hearing on July 6, 1998, Docket Number 2365.

Created in 1971 by the Texas Legislature as the Texas Catastrophe Property Insurance Association, the Association is composed of all insurers authorized to transact property insurance in Texas and operates pursuant to Article 21.49 of the Insurance Code. The Texas Legislature in H.B. 1632 (Acts 1997, 75th Leg., ch. 438, §1, eff. Sept. 1, 1997) changed the name of the Texas Catastrophe Property Insurance Association to the Texas Windstorm Insurance Association. The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the Association has provided this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. The Association also provides coverage to certain designated catastrophe areas in Harris County, including (i) effective March 1, 1996, the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Commissioner's Order Number 95-1200, November 14, 1995); (ii) effective June 1,

1996, the City of Morgan's Point (Commissioner's Order Number 96-0380, April 5, 1996); and (iii) effective April 1, 1997, in areas located east of State Highway 146 and inside the city limits of the City of Shoreacres and the City of Pasadena (Commissioner's Order Number 97-0225, March 11, 1997). The Association's plan of operation specifies in §5.4007 applicable building code standards to qualify for coverage from the Association, as required by Article 21.49, §6A(f) of the Insurance Code, for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made prior to the effective date of the new building code standards and specifications; and in §5.4008, for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after the effective date of the new building code standards and specifications. The Building Code for Wind Resistant Construction (Code) is adopted by reference in §5.4008(a) pursuant to Commissioner's Order Number 97-0626, (June 30, 1997) with an original effective date of June 1, 1998. The adopted amendments are necessary to delay the effective date of the new building code standards and specifications in the Code from June 1, 1998 to September 1, 1998. The change in the effective date is necessary to allow additional time for building products and materials that meet the windload requirements of the new Code to become available in the designated catastrophe areas subject to the Code. The June 1 effective date was not viable because of the scarcity in these designated catastrophe areas of certain building products, such as shutters, windows, doors, and garage doors, that are necessary to comply with the new Code. Adoption of the September 1 effective date will allow an additional three months for manufacturers to produce the new building products and for building material suppliers to obtain these new products for distribution to home builders. Although under the adopted amendments, the new Code becomes effective September 1, 1998, builders in the designated catastrophe areas subject to the Code are encouraged to use products and methods which comply with the Code in the interim as new products become available.

Under §5.4007, as amended, the building code standards and specifications in §5.4007(a) apply to designated catastrophe areas seaward of the Intracoastal Canal for structures constructed, repaired or to which additions are made prior to September 1, 1998; and the building code standards and specifications in §5.4007(b) apply to designated catastrophe areas inland of the Intracoastal Canal for structures constructed, repaired or to which additions are made prior to September 1, 1998. Under §5.4008, as amended, the building code standards and specifications contained in §5.4008(a) apply to designated catastrophe areas seaward of the Intracoastal Canal for structures constructed, repaired or to which additions are made on and after September 1, 1998; the building code standards and specifications contained in §5.4008(b) apply to designated catastrophe areas inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line (as specified in §5.4008(b)(2)(A)) and certain areas in Harris County for structures constructed, repaired or to which additions are made on and after September 1, 1998; and the building code standards and specifications contained in §5.4008(c) apply to designated catastrophe areas inland and west of the specified boundary line (as specified in §5.4008(b)(2)(A)) for structures constructed, repaired or to which additions are made on and after September 1, 1998.

NAMES OF THOSE COMMENTING FOR AND AGAINST.

For: Texas Association of Builders and Unique Style Incorporated.

Against: No comments were received opposing the adoption of the amendments.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE. Two commenters support the adoption of the amendments to allow manufacturers additional time to have products approved by the Department and made available along the coast.

The amendments are adopted pursuant to the Insurance Code, Articles 21.49 and 1.03A, and in accordance with the Government Code §§2001.004-2001.038. Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the Association. Article 21.49, §6A(f), Insurance Code, requires the Commissioner to appoint a Building Code Advisory Committee to advise and make recommendations to the Commissioner on building specifications in the Association's plan of operation for structures to be eligible for windstorm and hail insurance through the Association. Article 21.49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation with the advice of the Association's board of directors. Article 21.49, §6A(f) and §5(c), by their terms, delegate the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

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 July 9, 1998.

TRD-9810895

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

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



Subchapter F. Inland Marine Insurance

Division 1. Definition and Classification of Inland Marine Insurance

28 TAC §5.5002

The Commissioner of Insurance adopts an amendment to §5.5002(5)(Q), relating to inland marine insurance. The amendment is adopted with changes to the proposed text as published

in the February 6, 1998, issue of the *Texas Register* (23 TexReg 913). A public hearing was requested on the amendment as proposed and held April 9, 1998 to receive comments from interested persons. The effective date of the amendment as adopted is January 1, 1999.

The amendment is necessary to provide that credit property insurance coverage resulting from an open or closed end consumer credit transaction that is a retail installment transaction under the Texas Finance Code is a class of inland marine insurance for which rules, rates, and forms must be filed with the department for approval. The purpose of the amendment is to effectively regulate credit property insurance rates for Texas consumers. The final adoption includes several clarifying changes to the amendment as published, and changes the requirements for certain consumer disclosures. The final adoption includes a clarifying change to §5.5002(5)(Q)(i)(I) that no credit property insurance policy may cover the vendor's, mortgagee's or lessor's interest beyond termination of that interest. The final adoption includes a change to §5.5002(5)(Q)(i)(II) which removes the limiting definition of "durable personal property" from the amendment by eliminating published §5.5002(5)(Q)(i)(II)(a-a). The final adoption further changes §5.5002(5)(Q)(i)(II) as published by moving the provisions of various items to other locations within the amendment or by eliminating them from the amendment as adopted. Published §5.5002(5)(Q)(i)(II)(c-) is resequenced as §5.5002(5)(Q)(i)(II) and changed to provide that all policies or certificates must include a clear statement to the insured about the method of payment allocation to all outstanding purchase obligations referenced in the applicable lending documents to determine how the coverage will be applied. Published §5.5002(5)(Q)(i)(II)(b-) is changed and resequenced as §5.5002(5)(Q)(i)(III) to provide that premium calculation for credit property insurance coverage involving a closed end consumer transaction may not be based on amounts paid for services, meals, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums (e.g., credit life, credit disability, credit property, or credit involuntary unemployment insurance coverage). Published §5.5002(5)(Q)(i)(III)(a-a) through (-e-) are relocated and sequenced as adopted §5.5002(5)(Q)(i)(IV) and (V). Adopted §5.5002(5)(Q)(i)(IV) and (V) set out the specific, prescribed language which must be included in consumer disclosures, rather than merely indicating the essential information which must be included in the written disclosures provided at the time of invitation to contract. Published §5.5002(5)(Q)(i)(III) provisions regarding type size are changed in adopted §5.5002(5)(Q)(i)(IV) and (V) to require that the prominent written disclosure be provided in no smaller than 10-point boldface type, rather than 12-point boldface type. Adopted §5.5002(5)(Q)(i)(IV) prescribes the written disclosure to be provided for coverage extended under closed end consumer transactions. Adopted §5.5002(5)(Q)(i)(V) prescribes the written disclosure to be provided for coverage extended under open end consumer transactions. Each disclosure is set out to provide notice that the coverage might be duplicative, that it is primary and therefore the first source to be used in the event of a loss on property it covers, that it may be cancelled at any time by calling the insurer at the toll-free number provided or by writing the insurer, as well as what its cost is. Adopted §5.5002(5)(Q)(i)(IV) provides additional notice that the coverage ceases when the debtor has fully paid the debt. Adopted §5.5002(5)(Q)(i)(V) provides additional notice that the premium charged for the coverage is based on the entire outstanding balance, but that coverage applies only to tangible personal

property purchased on the open end credit account. The adoption changes published §5.5002(5)(Q)(i)(IV), resequenced as §5.5002(5)(Q)(i)(VI), to provide that policies or certificates extending credit property insurance coverage are to be provided to the insured at the time the coverage is accepted by the insurer, along with written instructions for filing a claim. The change also provides that the instructions shall include the insurer's toll-free telephone number, as well as a list of essential elements to be included by the insured to perfect a claim. The adopted amendment also includes two further changes not in the proposal as published. New §5.5002(5)(Q)(i)(VII) and (VIII) are adopted to address additional prescribed and specific notice requirements, respectively, when coverage is extended under open end consumer transactions. Adopted §5.5002(5)(Q)(i)(VII) mandates a prescribed disclosure no less frequently than semiannually on the face of the account statement or through a statement insert subject to typeface and type size requirements. Adopted §5.5002(5)(Q)(i)(VIII) requires a disclosure each billing cycle indicating the amount of credit property insurance charge separately from any other insurance charge, the amount of debt to which the rate applies, the date the rate was applied, and the period covered by the charge. Further reasoning and justification for revisions to the amendment as adopted are set out in the agency response to comments section.

The amendment provides that credit property insurance coverage resulting from consumer credit transactions must comply with all applicable provisions of the subparagraph. The amendment sets out the meaning of an open or closed end consumer credit transaction that is a retail installment transaction. The amendment provides that coverage under credit property insurance policies must include coverage while in transit, may be extended to include the interest of a vendee, mortgagor, or lessee, but may not cover the vendor's, mortgagee's, or lessor's interest beyond the termination of that interest. The amendment provides that policies or certificates must include a clear statement to the insured about the method of payment allocation to all outstanding purchase obligations referenced in the applicable lending documents to determine how the coverage will be applied. The amendment provides that premium calculations for credit property insurance coverage involving closed end consumer transactions may not be based on amounts paid for services, meals, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums (e.g., credit life, credit disability, credit property, or credit involuntary unemployment insurance coverage). The amendment provides that an offer to extend coverage for closed end consumer transactions must include a specific prescribed written disclosure setting out five items of information for the prospective insured. The amendment provides that an offer to extend coverage for open end consumer transactions must include a specific prescribed written disclosure which sets out seven items of information for the prospective insured. The amendment provides that at the time the coverage is accepted by the insurer, the policy or certificate extending the coverage must be provided to the insured, along with instructions on filing claims under the coverage. The instructions are to include the toll-free telephone number of the insurer and essential elements for inclusion by the insured in perfecting a claim. The amendment requires that at the time of acceptance by the insurer, the policies or certificates provided to the insured must include the same disclosures that were provided to the insured at the time of invitation to contract. The amendment requires that policies and certificates extending coverage under open end consumer transac-

tions must provide for a semiannual prescribed disclosure on the face of the account statement or through a statement insert which contains four essential items of information for the insured consumer debtor. The amendment provides that policies and certificates extending coverage under open end consumer transactions must provide that the insured will be furnished a statement each billing cycle setting out four essential items of information, including the amount of credit property insurance charge, the amount of debt to which it applies, the date the rate was applied, and the period covered by the monthly charge. The amendment provides that credit property insurance coverage resulting from commercial credit transactions, as set out in clause (ii) of the amendment, continues to be non-regulated.

The department received written comments on the amendments as published from five sources. One commenter, though requesting a hearing on the amendments, did not submit specific written comments on the amendments as published. A summary of those comments, comments made at the hearing, and the department response follow:

Published §5.5002(5)(Q)(i)(II)(-a-)

COMMENT: The two comments on published §5.5002(5)(Q)(i)(II)(-a-) urged that the definition of "durable personal property" is too restrictive, that any blanket prohibition on sale of open-end credit property insurance for specific noninsurable items effectively eliminates availability of this coverage, and that to insist that wearing apparel and draperies are uninsurable items runs contrary to general insurance practice. The commenters urged that personal property floaters, for example, include clothing, linens, draperies and rugs among unscheduled property items. They also urged that homeowner policies also ordinarily cover clothing and draperies. The commenters stated that if these items are carved out, many consumers electing credit coverage will be left without protection for such items, and retailers will not be able to protect their purchase money security interests in such items. One commenter suggested eliminating the definition of "durable personal property" entirely and addressing coverage of an outstanding balance composed of various property and invariably some non-property items, but consistent with a premium rate discounted to recognize existence of such items in the outstanding account balance.

RESPONSE: The department has devoted significant time to considering the merits of these recommendations. After careful consideration, the limiting definition of "durable personal property" has been removed from the adopted amendment. This removal is based on written comments and hearing testimony concerning impracticability of computer systems reprogramming for segregation and tracking of insured and noninsured items by retailers to permit timely compliance by insurers with the published amendment. In making the decision to remove the limiting definition, the department evaluated any continuing benefit that credit property insurance might provide to some consumers against the detriment that might have been occasioned by unavailability of such coverage resulting from retailers' inability to reprogram existing computer systems quickly enough. The department understands that both general retail department stores and the insurance industry might prefer developing a single rate applied to a total periodic outstanding balance, since department store account balances may include charges for both durable and nondurable goods, as well as services and consumables. However, the department also is sensitive to the fact that the general accepted definition of "durable goods" includes

only goods that have a class life extending over a period of many years without significant deterioration, like furniture, appliances, electronic goods and fixtures. Moreover, property historically insured under an installment sales floater as defined under the Texas Definition of Inland Marine Insurance has been big ticket items such as furniture and appliances, which generally were sold under closed end installment contracts where the interests of both the retailer and the purchaser were easily determined. Notably, although the adoption includes removal of the limiting definition of "durable personal property," the adopted amendment continues to provide that for coverage extended in a closed end consumer credit transaction the premium charged may not be based on amounts paid for services, meals, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums (e.g., credit life, credit disability, credit property, or credit involuntary unemployment insurance coverage). In addition, the elimination of the "durable personal property" definition also is accompanied by enhanced as well as additional consumer disclosure requirements for coverage extended under open end consumer credit transactions. For disclosures made at the time of an offer to extend coverage and at the time of policy-or-certificate delivery, the notice language is prescribed, to assure that consumers electing such coverage have made an informed election for that coverage. The adoption also includes two new required post-issuance disclosures, the language for one of which is prescribed, to be provided periodically to insureds with credit property insurance coverage under open end consumer credit transactions. These disclosures are to assure continued receipt of information by such consumers to assist them in making decisions about whether to continue their credit property insurance coverage. Finally, the department will vigilantly monitor the credit property insurance rate and form filing process and activity under provisions of the adopted amendment, and as necessary will consider further amendment to the rule.

Published §5.5002(5)(Q)(i)(II)(-b-)

COMMENT: One commenter recommended published §5.5002(5)(Q)(i)(II)(-b-) be revised to clarify that "other insurance premiums" would include credit property insurance premiums for purposes of exclusion from premium calculations for credit property insurance coverage addressed in the amendment.

RESPONSE: Although the final adoption changes the manner and extent of application of the exclusion of "other insurance premiums" from premium calculations, the department agrees that for closed end transactions the recommended revision should be included. For that reason the final adoption includes language in resequenced §5.5002(5)(Q)(i)(III) to indicate that "other insurance premiums" include premiums for credit property insurance.

Published §5.5002(5)(Q)(i)(II)(-c-)

COMMENT: The three comments received on published §5.5002(5)(Q)(i)(II)(-c-) objected to the requirement that certificates state the payment allocation as set out in the provision, on the bases that the requirement places an inappropriate compliance burden on insurers, that since the matter of allocation is solely within the control of a retail creditor an insurer cannot anticipate every merchant's payment application procedure, and that there is no universally accepted or required payment allocation method for accounts for which coverages of this type may be issued. The commenters urged this matter

is outside the scope of regulation. Additional similar comments on this provision were made at the hearing.

RESPONSE: Though the department does not necessarily agree with all ideas expressed in comments on this provision, the adoption includes a change to clearly indicate the intent of the provision. The requirement set out in published §5.5002(5)(Q)(i)(II)(-c-) is designed to provide clear and necessary information to insureds for purposes of understanding the extent and duration of coverage under credit property insurance policies and certificates. If the insured is not aware of how a payment is applied, the insured cannot know what is or is not covered under the insurance policy at a given time. If consumers pay premium for insurance coverage, they have a right to know what is covered and for what period of time. The published language was selected based on a belief it represented an almost universal standard for payment allocation. It was not intended to require insurers to control payment allocation under such an arrangement. However, to eliminate any confusion and make clear the intent of the provision, the final adoption includes a revision to the published provision, sequenced as §5.5002(5)(Q)(i)(II), stating that policies or certificates must include a clear statement to the insured about the method of payment allocation to all outstanding purchase obligations referenced in the applicable lending documents to determine how the coverage will be applied. This will help insureds understand the limits of coverage under policies and certificates of credit property insurance.

COMMENT: One commenter suggested placing a new nonsubstantive provision to be captioned §5.5002(5)(Q)(i)(II)(-c-) into the proposal, and to resequence published §5.5002(5)(Q)(i)(II)(-c-) as (-d-), for the purpose of providing that premium calculations for coverage addressed in this clause are to be based on the lower of purchase price or original debt amount.

RESPONSE: Although the suggested revision was in the department's first published proposal, later withdrawn, the department considers such a revision to this adoption unnecessary, primarily because of other revisions made to the amendment in connection with adoption. The department therefore declines to make the recommended revision.

Published §5.5002(5)(Q)(i)(III)

COMMENT: Three commenters objected to the five separate items to be disclosed in 12-point bold face type at the time of invitation to contract. One said it is an onerous requirement, may match the size of the credit application itself, and will make the offer of open-end credit insurance coverage impractical. Another suggested it is unnecessary to make the same disclosures both before and after the sale. The third suggested, in addition to the notice being possibly oversized for the application, that a substantially similar notice be provided at the time a policy is provided to an insured with a 30-day free look provision. Other commenters at the hearing also suggested reduction or elimination of pre-sale disclosure and urged instead that post-sale disclosure including a 30-day free look notice is sufficient.

RESPONSE: The department agrees in part and disagrees in part with these comments. The department agrees that, for purposes of space utilization, requiring disclosures to be in no smaller than 10-point boldface type at the time of invitation to contract and at the time the policy or certificate is provided to the insured is more reasonable than requiring 12-point type. The department disagrees with the remainder of the comments, and the final adoption retains the requirement for both pre-issuance

and post-issuance consumer disclosures in both closed end and open end consumer credit transactions. The department strongly believes the time for a consumer disclosure is before the purchase, not after. One of the most important disclosure elements in the amendment is to advise the consumer that the insurance offered might duplicate coverage provided under a homeowners policy. If the consumer has a homeowners policy, the solicitation process can stop at that point. It is inappropriate to wait and disclose this information after a policy has been issued and then require the consumer to cancel the policy within the first 30 days. In fact, a 30-day free look provision is itself potentially confusing to consumers. Some might not realize that the 30-day free look is just that, and that they can in fact cancel the coverage at any time, but that after 30 days they simply won't receive a full refund of premium. Since the purpose of the required disclosures is to assure that consumers electing credit property insurance coverage have made an informed election for that coverage, the department considers that both the notice and manner of presentation are necessary and reasonably required both at the time of invitation to contract and at the time the policy or certificate is provided to the insured. The adoption therefore retains the requirement for consumer disclosure to be made at both points in time. Moreover, and partially in response to comments made about space requirements for the consumer disclosures, the adoption changes published provisions by setting out prescribed actual notice language for the required consumer disclosures addressed in the published proposal. The prescribed notice language was drafted to be as plain, concise and brief as possible to minimize space requirements for insurers, while simultaneously facilitating consumer comprehension of the notices. In addition, the adoption includes two new mandatory post-issuance disclosures, the language for one of which is prescribed, to be provided periodically to insureds with credit property insurance coverage under open end consumer credit transactions. These disclosures are to assure continued receipt of information by such consumers to assist them in making decisions about whether to continue their credit property insurance coverage.

Published §5.5002(5)(Q)(i)(IV)

COMMENT: Three commenters objected to provision of claim forms at the time coverage is issued, on the bases that: (1) claim forms for other lines of insurance typically are not required or provided to insureds at issuance; (2) since only a certain percentage of insureds will file claims, issuing claim forms with certificates results in unnecessary printing and handling costs; (3) giving claim forms at issuance is not beneficial because insureds may discard or misplace them prior to a claim arising; (4) providing claim forms at the retail location may confuse insureds, and slow claim response/processing; and (5) claim forms change over time, so it makes more sense to provide them at the time a claim has arisen. In addition, two of the three commenters recommended credit property insurers prominently display a claim contact address and claim form toll-free number on the certificate.

RESPONSE: The department agrees that providing actual copies of claim forms is unnecessary at the time the policy is issued. The department also believes, however, that in addition to providing a toll-free telephone number, claim filing instructions provided at the time the certificate is delivered should include information setting out essential elements an insured must include to perfect a claim under the policy. For this reason, the adoption changes published §5.5002(5)(Q)(i)(IV)

to §5.5002(5)(Q)(i)(VI), and deletes the requirement to provide claim forms at issuance, but includes a requirement to provide instructions on filing claims which contain the insurer's toll-free telephone number and a list of essential elements for inclusion by the insured to perfect a claim.

COMMENT: A commenter suggested clarification that the policies or certificates addressed in this clause are to be provided at the time the coverage is accepted "by the insurer."

RESPONSE: The department agrees that inserting the words "by the insurer" after "accepted" provides necessary clarification, since the provision is intended to address the time at which the policy is issued by the insurer, and the final adoption includes the recommended revision in §5.5002(5)(Q)(i)(VI).

EFFECTIVE DATE

COMMENT: Two commenters suggested in writing that a specific effective date be set out to permit a compliance window. One proposed May 15, 1998. The other suggested 90 – 120 days from the date the notice of final adoption is published in the Texas Register. At the hearing, some commenters also recommended an "earliest possible" effective date, suggesting alternatively that the effective date of the amendments be June 1, 1998 or July 1, 1998. Others indicated that compliance with coverage and premium rate calculation restrictions – and the corresponding necessary segregation of insurable items from noninsurable items in open end transactions over the term of coverage – would require substantial computer programming and considerably more time than that recommended by the staff. Such comments suggested a phased-in effective date with a fully effective rule mid-year 2000.

RESPONSE: The department agrees that the amendment should set out an effective date to permit credit property insurers appropriate time to comply with the rate and form filing provisions of the rule amendment. After careful consideration, the department has determined the amendment shall be effective January 1, 1999. The effective date is based on amended compliance requirements resulting from changes made to the amendment in response to comments received by the department during and after the publication period. The effective date recognizes that substantial computer programming to segregate insurable items from noninsurable items in open end consumer credit transactions is no longer necessary, and that those time requirements have been eliminated by revisions to the adopted amendment.

Comments generally in favor of the amendments as published were received from the Center for Economic Justice and Zale Indemnity Company. Comments generally against the amendments were received from American Bankers Insurance Company, Wesco Insurance Company, and American National Insurance Company. The Consumer Credit Insurance Association (CCIA) and Center for Economic Justice requested a hearing on the amendments. The Office of Public Insurance Counsel and Consumers' Union expressed support for the rule at the hearing. The CCIA presented oral comments at the hearing, generally in favor of regulating credit property insurance, but generally against the amendments as proposed and published.

The amendment to §5.5002(5)(Q) is adopted proposed pursuant to the Insurance Code, Articles 5.53 and 1.03A. Article 5.53 authorizes the commissioner to adopt a definition and classes of inland marine insurance. 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.

§5.5002. *Texas Definition of Inland Marine Insurance.*

Inland marine insurance is defined and classified as follows.

(1) – (4) (No change.)

(5) Other inland marine risks.

(A) – (P) (No change.)

(Q) Inland marine insurance classes of coverage, commonly referred to as consumer credit property insurance and commercial credit property insurance, set out in clauses (i) and (ii), respectively, as follows:

(i) Coverage resulting from an open or closed end consumer credit transaction that is a retail installment transaction (filed). For purposes of this subparagraph, "retail installment transaction" has the meaning assigned in the Finance Code, §345.001. The credit property insurance addressed in this clause must comply with provisions in subclauses (I) through (VIII) of this clause.

(I) Policies offering coverage addressed in this clause must include coverage while in transit and may be extended to include the interest of a vendee, mortgagor, or lessee, but in no event shall the policy cover the vendor's, mortgagee's, or lessor's interest beyond the termination of that interest.

(II) All policies or certificates issued under this clause shall include a clear statement to the insured about the method of payment allocation to all outstanding purchase obligations by reference to the applicable lending documents to determine how the coverage will be applied.

(III) Premium calculations for coverage addressed in this clause involving a closed end consumer transaction may not be based on amounts paid for services, meals, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums (e.g., credit life, credit disability, credit property, or credit involuntary unemployment insurance coverage).

(IV) An offer to extend coverage for a closed end consumer transaction addressed in this clause shall include, at the time of the invitation to contract, the following prominent written disclosure in no smaller than 10-point boldface type: "This coverage might duplicate existing coverage if you have a residential property insurance policy. This coverage ceases when you have fully paid the debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number provided to you, or by writing to the insurer. This coverage costs (set out the total identifiable credit property insurance charge)."

(V) An offer to extend coverage for an open end consumer transaction addressed in this clause shall include, at the time of the invitation to contract, the following prominent written disclosure in no smaller than 10-point boldface type: "This coverage might duplicate existing coverage if you have a residential property insurance policy. It applies to any item of covered property on which you owe a debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number provided to you, or by writing to the insurer. This coverage costs \$(enter amount) per \$100 of outstanding balance on your account. The premium charged for this coverage is based on your entire outstanding balance, but the coverage only applies to tangible personal property purchased on an open-end credit account. Services,

meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums, which may be part of your outstanding balance, are not covered."

(VI) Policies or certificates extending the coverage addressed in this clause shall be provided to the insured at the time coverage is accepted by the insurer, along with written instructions on filing claims under the coverage. The instructions shall include the insurer's toll-free telephone number, as well as a list of essential elements for inclusion by the insured to perfect a claim. All such policies or certificates provided to insureds shall include the disclosure set out in subclause (IV) of this clause, or subclause (V) of this clause, as applicable, subject to the same type face and size requirements.

(VII) Policies and certificates of insurance issued to cover open end consumer transactions shall provide that the policyholder or certificate holder will be furnished the following disclosure notice on the face of the account statement or through a statement insert not less than semi-annually in no smaller than 6-point boldface type if on the face of that statement or in no smaller than 10-point boldface type if on a statement insert: "If you are paying a credit property insurance premium, that premium is based on the entire outstanding balance of this account. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number it has provided to you, or by writing to the insurer. Any premium charged for credit property insurance coverage is based on your entire outstanding balance, but the coverage only applies to tangible personal property purchased on an open-end credit account. Services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums, which may be part of your outstanding balance, are not covered."

(VIII) Policies and certificates of insurance offering coverage for an open end consumer transaction shall provide that the policyholder or certificate holder will be furnished a statement each billing cycle, but not less frequently than quarterly, which indicates:

- (-a-) the amount of the credit property insurance charge, shown separately from any total insurance charge;
- (-b-) the amount of the insured's indebtedness to which the insurance charge rate was applied;
- (-c-) the date the rate was applied; and
- (-d-) the period covered by such monthly charge.

(ii) Coverage resulting from commercial credit transactions involving installment sales, leased property, and deferred payment contracts (non-regulated). For purposes of this subparagraph, a commercial credit transaction is one which does not fall within the meaning of an open or closed end consumer credit transaction that is a retail installment transaction under clause (i) of this subparagraph. The credit property insurance coverage addressed in this clause covers the interest of a vendor or mortgagee in property sold in a commercial transaction under an installment sales contract, or a partial or deferred payment contract; and the interest of a lessor in property leased. Credit property insurance policies subject to this clause must include coverage while in transit and may be extended to include the interest of the vendee, mortgagor, or lessee, but in no event shall the policy cover beyond termination of the vendor's, mortgagee's, or lessor's interest.

(R) – (OO) (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 July 9, 1998.

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Lynda H. Neseholtz

General Counsel and Chief Clerk

Texas Department of Insurance

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



Subchapter N. Residential Property Insurance Market Assistance Program

28 TAC §§5.10001, 5.10003, 5.10004, 5.10007-5.10009, 5.10011

The Commissioner of Insurance adopts amendments to §§5.10001, 5.10003, 5.10004, 5.10007-5.10009, and 5.10011, concerning the plan of operation of the Residential Property Insurance Market Assistance Program (MAP), pursuant to the Insurance Code, Article 21.49-12. The amendments are adopted without changes to the text published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 4196) and will not be republished.

Article 21.49-12 was enacted by the Texas Legislature in 1995 (Acts 1995, 74th Legislature, p. 3008, ch. 415, §5, eff. August 28, 1995) to require the Commissioner to establish a voluntary market assistance program to assist consumers in obtaining residential property insurance coverage, defined in Article 21.49-12, §1(a) as homeowners, residential fire and allied lines, and farm and ranch owners coverage, in underserved areas that are determined and designated by the Commissioner under separate rule (28 TAC §5.3700). The purpose of the MAP is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including rural areas. The adopted amendments are necessary to update the plan of operation to provide for the processing of MAP applications by Department staff in lieu of the contracting entity; and to incorporate changes because farm and ranch owners and farm and ranch insurance are now regulated as commercial property insurance pursuant to Article 5.13-2 of the Insurance Code. These amendments are recommended for adoption by the MAP Executive Committee pursuant to Article 21.49-12, §2(a) of the Insurance Code and §5.10012 of the plan of operation (also §5.10012 of this title).

The following adopted amendments to §§5.10001, 5.10003, and 5.10007-5.10009, and 5.10011 concern the processing of MAP applications by Department staff in lieu of the Department's contracting entity. The adopted amendment to §5.10001 deletes the reference to the Department's contracting entity because it is no longer necessary for the plan of operation to address the role and responsibilities of the Department's contracting entity. Section 5.10003 deletes the definition for "contracting entity" and adds number designations for the defined terms in accordance with recently adopted Texas Register form and style rules. Section 5.10007 is amended to delete reference to the contracting entity's electronic bulletin board and to provide that an insurer may use any criteria from the MAP application in selecting applications for review. Section 5.10008 is amended to delete the reference to the contracting entity's electronic database and to provide that within five

working days after the issuance date of the insurance policy issued through the MAP, the insurer shall notify the Department by mail or facsimile transmission, that the insurance policy was issued. Section 5.10009 is amended to provide that the Department's MAP Division, in lieu of the contracting entity, shall perform the application review and referral as specified in subsection (b) and subsection (c). The section is also amended to revise the application review and referral process since a contracting entity will no longer be involved in the processing of MAP applications. Subsection (d) of §5.10009 is amended to delete reference to the contracting entity's electronic bulletin board and database, to provide that an insurer may select MAP applications for review based on criteria contained in the application, and to provide for notification to the Department's MAP Division of the insurer's determination of whether to issue a premium quote and issuance of a premium quote. An amendment is also adopted to subsection (d)(5) to provide that a MAP application shall be considered inactive upon acceptance of a quote by the applicant. Amendments are adopted to subsection (f) to delete the application of confidentiality requirements to the contracting entity and to provide instead that copies of the application may be forwarded directly to prospective insurers for the sole purpose of selecting risks for review for the purpose of writing residential property insurance. Section 5.10011 is amended to delete reference to the contracting entity's electronic bulletin board and to provide instead that an application shall not be counted for purposes of the Commissioner's consideration in determining to hold a hearing to consider implementation of mandatory participation by insurers in the MAP unless the application has been either active for 90 days or a policy has been issued, whichever occurs first. A parallel amendment is adopted to §5.10011(c)(3)(B) concerning the Executive Committee's determination of the need to recommend implementation of mandatory MAP.

The remaining adopted amendments are related to the regulation of farm and ranch owners and farm and ranch insurance as commercial property insurance. The Legislature enacted S.B. 1499 (Acts 1997, 75th Leg., p. 5030, ch. 1330, §1, eff. Sept. 1, 1997) to provide that effective January 1, 1998, farm and ranch and farm and ranch owners insurance are no longer regulated as personal lines coverage pursuant to Articles 5.35 and 5.101 of the Insurance Code, but rather are to be regulated as commercial property insurance under Article 5.13-2 of the Insurance Code. This legislative enactment necessitates the following adopted changes to §5.10004 of the MAP plan of operation. New subparagraphs (C) and (D) have been added to subsections (b)(1) and (b)(2) to include a farm and ranch owners policy form and endorsements filed by an individual insurer pursuant to Article 5.13-2 of the Insurance Code and approved by the Commissioner as forms that may be used in Class 1 and Class 2 designated underserved areas respectively, in writing coverage through the MAP. The remaining subparagraphs have also been redesignated. Amendments are adopted to subsection (c) to provide that the form rules governing the writing of farm and ranch policies and farm and ranch owners policies in the MAP shall be the rules filed by individual insurers and approved by the Commissioner pursuant to Article 5.13-2 of the Insurance Code. Subsection (d) is amended to provide that the types of coverage that may be provided in Class 1 and Class 2 designated underserved areas include any other coverage available under policy forms and endorsements filed by an individual insurer pursuant to Article 5.13-2 for the purpose of

providing farm and ranch or farm and ranch owners coverage and approved by the Commissioner.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

One commenter supports the revisions which designates the Texas Department of Insurance as the entity that will review and process MAP applications and incorporates commercial farm and ranch owners policies into the plan.

NAMES OF THOSE COMMENTING FOR AND AGAINST.

For: Office of Public Insurance Counsel.

The amendments are adopted pursuant to the Insurance Code, Articles 21.49-12 and 1.03A. Article 21.49-12 §1(a) requires the Commissioner to establish a voluntary market assistance program to assist Texas consumers in obtaining residential property insurance coverage in underserved areas, which shall be determined and designated by the Commissioner by rule (28 TAC §5.3700) using the standards specified in Article 5.35-3, §1 of the Insurance Code. Article 21.49-12 §2(a) provides that the MAP Executive Committee may submit suitable amendments to the plan of operation to the Commissioner for adoption by rule after notice and hearing. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

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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Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

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



28 TAC §5.10016

The Commissioner of Insurance adopts amendments to §5.10016, concerning the application form (Form TMAP-10, Texas MAP Application) to be used in the Residential Property Insurance Market Assistance Program (MAP) pursuant to the Insurance Code Article 21.49-12. The amendments are adopted with changes to the text published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4202).

Article 21.49-12 was enacted by the Texas Legislature in 1995 (Acts 1995, 74th Leg. p. 3008, ch. 415, §5, eff. Aug. 28, 1995) to require the Commissioner to establish a voluntary market assistance program to assist consumers in obtaining residential property insurance coverage, defined in Article 21.49-12, §1(a) as homeowners, residential fire and allied lines, and farm and ranch owners coverage, in underserved areas that are determined and designated by the Commissioner under separate rule (28 TAC §5.3700). The purpose of the MAP is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including rural areas. Form TMAP-10, which is adopted

by reference in §5.10016, is used in applying for homeowners, dwelling, farm and ranch owners, and farm and ranch coverage. The amendments to Form TMAP-10 (Texas MAP Application) are necessary to amend the applicant's authorization because a contracting entity is no longer processing the MAP applications and to update the form to add an entry blank for indicating the Public Protection Classification for the risk to be insured. These amendments are recommended for adoption by the MAP Executive Committee pursuant to Article 21.49-12, §2(a) of the Insurance Code and §5.10012 of the plan of operation (also §5.10012 of this title, relating to Amendments to the MAP Plan of Operation).

Article 21.49-12, §2(b) of the Insurance Code requires the use of applications for assistance to apply for coverage through the MAP. Form TMAP-10 is amended to delete the reference to forwarding of the application form and other pertinent documents to the Department's contracting entity because MAP applications are now being processed by the Department in lieu of the contracting entity. Under the adopted new procedures (see adopted 28 TAC §5.10009 also published in this issue), the Department's MAP Division will forward copies of the completed application form directly to insurers. The applicant's authorization on the application form continues, however, to be necessary because of the confidentiality requirements in Article 21.49-12, §5, which provide that the Department shall maintain as confidential all application files and related documents received under Article 21.49-12, except to certain specified persons and entities, including the originating and issuing agents, the applicant for their own file, or an insurer that agrees to insure the applicant.

The Commissioner under Commissioner's Order No. 96-1377 (November 25, 1996) repealed the existing Texas Key Rate Schedule used for grading public fire protection of cities and towns in Texas and replaced that schedule with a new Fire Suppression Rating Schedule to be used for determining and grading public fire protection of cities, towns, and districts in Texas. The use of the Fire Suppression Rating Schedule to grade public fire protection results in the establishment of Public Protection Classifications (PPCs) for cities, towns and districts to reflect the appropriate classification of the public fire protection afforded in the specific city, town or district. On August 21, 1997, the Commissioner adopted in Commissioner's Order No. 97-0840 the new residential benchmark rates which incorporated the use of the new Fire Suppression Rating Schedule and Public Protection Classifications as part of the new rating system for homeowners and dwelling insurance. The effective date of the new rating schedule and the recently adopted residential property benchmark rates was February 1, 1998. Pursuant to Article 21.49-12, §2(b)(3), each insurer that writes a policy through the MAP has the right to individually evaluate the risk and apply the rates in accordance with the provisions of the Insurance Code applicable to each insurer. Insurers that write homeowners and dwelling insurance policies through the MAP must use the PPCs adopted by the Commissioner unless an insurer files a different classification system that is approved by the Commissioner pursuant to Article 5.101, §3(k)-(m) of the Insurance Code. The Legislature enacted S.B. 1499 (Acts 1997, 75th Leg., p. 5030, ch. 1330, §1, eff. Sept. 1, 1997) to provide that effective January 1, 1998, farm and ranch and farm and ranch owners lines of insurance are no longer regulated as personal lines coverage pursuant to Articles 5.35 and 5.101 of the Insurance Code, but rather are to be regulated as commercial property insurance under Article 5.13-2 of the Insurance Code.

Therefore, an insurer that writes farm and ranch owners and farm and ranch insurance policies in Texas must file applicable rates and rating plans pursuant to Article 5.13-2, §5 of the Insurance Code. The rates and rating plans must include a rating schedule to recognize the grading of public fire protection. Insurers that write farm and ranch owners and farm and ranch insurance policies through the MAP may use the PPCs approved by the Commissioner for use with commercial risks or use the individual insurer's own classification system filed pursuant to Article 5.13-2, §5 and which is not disapproved pursuant to Article 5.13-2, §7. The Commissioner amends Form TMAP-10, Texas MAP Application, to update the form to implement the use of the Public Protection Classifications to add an entry blank for indicating the PPC for the risk to be insured. Because of the capping of premiums for homeowners and dwelling insurance for the first two years (pursuant to Commissioner's Order No. 97-0840, effective February 1, 1998) and farm and ranch owners and farm and ranch insurance (insurers may file to use the existing or advisory form and ranch loss costs which include a capping of premiums for the first two years), it is necessary to continue to provide an entry blank on the MAP application form for indicating the key rate as well as the PPC.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

One commenter supports the amendments which adds recently approved Public Protection Classifications to the form.

NAMES OF THOSE COMMENTING FOR AND AGAINST.

For: Office of Public Insurance Counsel.

The amendments are adopted pursuant to the Insurance Code, Articles 21.49-12 and 1.03A. Article 21.49-12, §1(a) provides that residential property insurance shall be provided through the MAP under a homeowners policy, a residential fire and allied lines policy, and a farm and ranch policy. Article 21.49-12, §2(b)(1)-(2) requires the use of applications for assistance to apply for coverage through the MAP. Article 21.49-12, §2(b)(2) requires that each MAP application must be accompanied by a copy of a current nonrenewal or cancellation notice and a current declination letter from at least one other insurer writing the coverage sought and that applicants not having previous residential property insurance coverage must provide copies of current declination letters from at least two unaffiliated insurers writing the coverage sought. Article 21.49-12, §8 authorizes the Commissioner to adopt rules in addition to the plan of operation that are appropriate to accomplish the purposes of Article 21.49-12. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

§5.10016. *Forms Promulgated for Use in the Residential Property Insurance Market Assistance Program.*

The Commissioner of Insurance adopts by reference the forms specified in this section for use in the Residential Property Insurance Market Assistance Program, which is operated pursuant to Article 21.49-12 of the Insurance Code. Specimen copies of these forms are available from the Texas Department of Insurance, MAP Division, MC #104-MA, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104. These forms are:

(1) Form TMAP-10-Texas MAP Application. As Amended Effective August 1, 1998.

(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.

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TRD-9810897

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

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



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 Commissioner of Insurance adopts new subchapter O, §§21.2301-21.2306, concerning a notice of the availability of coverage through the Texas Health Insurance Risk Pool (Health Pool). Sections 21.2304 - 21.2306 are adopted with changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5328). Sections 21.2301 -21.2303 are adopted without changes and will not be republished.

House Bill 710, enacted by Acts 1997, 75th Legislature, codified at Texas Insurance Code Article 3.77, effective July 1, 1997, amended the existing Texas Health Insurance Risk Pool statute to enable the Health Pool to commence operation. The establishment of the Health Pool brings Texas into compliance with the federal Health Insurance Portability and Accountability Act of 1996 (sometimes referred to as "HIPAA") and federal regulations. The Health Pool will also 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. House Bill 710 also authorizes the commissioner of insurance to establish rules as are necessary and proper to implement the Health Pool. The enrollment of eligible persons is essential to the successful implementation of the Health Pool. This new subchapter, which requires health carriers that provide individual health coverage in this state to provide a notice in certain instances, is thus necessary to facilitate public awareness of and subsequent enrollment in the Health Pool. The required notice is an efficient method of raising general public consciousness of the Health Pool as well as providing information directly to persons likely eligible for Health Pool coverage. The notice is also an economical alternative to advertising, the cost of which would require additional assessments against participating health carriers. This subchapter also specifies the requirements for the distribution and content of the notice and provides a model notice that health carriers can utilize to notify persons that they may be eligible for coverage under the Health Pool.

After receiving public comments on the proposal, the department has made the following changes to the subchapter. Based on comments, the department changed language in §21.2304(b)(3)(C) to make it consistent with language

in §21.2304(b)(3)(B). Based on comments, the department changed language in §21.2305(b) to clarify the standard for proving eligibility for coverage under the Health Pool. Based on comments, the department deleted superfluous language from §21.2305(b). The department changed language in §21.2306 so that application of the new subchapter will coincide more closely with its effective date.

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 August 1, 1998.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

§21.2304(b)(3)(C).

Comment: A commenter suggested replacing the phrase "a statement offering" with the phrase "the offer of" as this language is consistent with the language of §21.2304(b)(3)(B).

Response: The agency agrees and has made the suggested change.

§21.2305(b)

Comment: A commenter suggested replacing the word "evidence" with the word "documentation" in the second paragraph of the notice form.

Response: The agency agrees and has made the suggested change.

Comment: A commenter suggested deleting the phrase "a statement containing" from the third bullet point of the notice, as a rate quote may or may not be contained in another statement.

Response: The agency agrees and has made the suggested change.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For with changes: The Texas Health Insurance Risk Pool.

The new subchapter is adopted 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.

§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) the offer of 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 August 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 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 July 10, 1998.

TRD-9810951
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 30, 1998
Proposal publication date: May 22, 1998
For further information, please call: (512) 463-6327

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter H. Tax Record Department

34 TAC §9.3004

The Comptroller of Public Accounts adopts an amendment to §9.3004, concerning the appraisal records of all property, without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5947).

This rule is being amended to provide for the addition of the transfer of school tax limitation for over-65 persons from House Bill 4, 75th Legislature, 1997, effective January 1, 1998. The amendment also adds the limitation on the appraised value of residence homesteads and deferral collection eligibility from Senate Bill 841, 75th Legislature, 1997, effective January 1, 1998.

We received one comment from a chief appraiser. He did not have any objections to the amendments to the rule, but did not agree with the fiscal note that stated this rule had no significant impact on local governments. Fiscal implications for local governments were evaluated in the fiscal note that accompanied the statutory provisions, and were considered at that time. The fiscal note for this rule action evaluated costs that were not covered by the statute.

This amendment is adopted under the Tax Code, §5.07, which requires the comptroller to prescribe the contents and form for the administration of the property tax system.

The amendment implements the Tax Code, §§6.13, 11.26, 23.12, 23.23, 25.02, and 33.065.

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 July 10, 1998.

TRD-9810950
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: July 30, 1998
Proposal publication date: June 5, 1998
For further information, please call: (512) 463-3699

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Interaction with the Public

37 TAC §81.53

The Texas Youth Commission (TYC) adopts an amendment to §81.53, concerning research projects, with changes to the proposed text as published in the March 20, 1998, issue of the *Texas Register* (23 TexReg 2985). The changes consist of a correction in wording.

The justification for amending the section is more efficient use of state resources.

The amendment will change the name of the research and planning department to the research department to reflect an organizational change.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt policies and make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

§81.53. Research Projects.

(a) Purpose. The purpose of this rule is to allow for research related to juvenile delinquency and to ensure confidentiality by establishing procedures which comply with state and federal guidelines and accepted professional and scientific ethics.

(b) Restrictions.

- (1) The agency will encourage research.
- (2) The agency will use research results to aid decision making regarding agency operations and for youth treatment programs.
- (3) The agency will collaborate with other agencies whenever possible and share research information as appropriate.

(4) Any patentable product, process, or idea that might result from a research project funded by the Texas Youth Commission shall be the property of the Texas Youth Commission.

(c) Youth Participation. Participation by TYC youth as research subjects shall be restricted as follows:

- (1) TYC youth will not be used in experimental projects involving medical, pharmaceutical, or cosmetic research.
- (2) TYC youth may participate in nonmedical, nonpharmaceutical or noncosmetic research on a voluntary, noncoercive basis.
- (3) TYC youth who elect to participate in research projects will not be denied basic services available to other youth, nor participate in research activities which may accrue negative personal results.

(d) Researchers. TYC staff, university faculty or students, or contracted firms or individuals may, if approved, conduct research if they:

- (1) show that the proposed project will provide benefits to TYC or the juvenile justice profession;
- (2) ensure confidentiality of TYC youth;

(3) do not place undue burden on TYC staff, youth or resources; and

(4) agree to comply with other agency rules of conduct for research as specified below.

(e) Project Management. Procedures for research projects are managed through the research department.

(f) Research Proposals. Project directors other than those employed by the research department must submit a research proposal to the research department. The proposal should include as much of the following information as possible:

- (1) project title;
- (2) names and qualifications of all project researchers;
- (3) purpose (e.g., thesis, professional paper, dissertation);
- (4) research design and methodology;
- (5) number of and time required by each TYC youth if used in research;
- (6) provisions for confidentiality of youth names and identification numbers;
- (7) amount of TYC staff time needed;
- (8) benefit to TYC or juvenile profession;
- (9) research supervisor, if any (e.g., Chairman of Thesis Committee); and
- (10) amount and source of funding, if any.

(g) Research Agreement. TYC and the research consultant shall enter into a research agreement prior to the commencement of an outside research project. The agreement shall contain the following:

- (1) a description of the research project;
- (2) an agreement to maintain the confidentiality of individual youth;
- (3) a clause providing that any patentable product, process, or idea that results from the performance of the research agreement, and for which TYC has expended appropriated funds, shall become the property of the Texas Youth Commission; and
- (4) an agreement to furnish TYC with a copy of the final report.

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 July 6, 1998.

TRD-9810671

Steve Robinson
Executive Director

Texas Youth Commission

Effective date: August 28, 1998

Proposal publication date: March 20, 1998

For further information, please call: (512) 424-6244



Chapter 87. Treatment

Subchapter A. Program Planning

37 TAC §87.3

The Texas Youth Commission (TYC) adopts an amendment to §87.3, concerning resocialization program, with changes to the proposed text as published in the February 6, 1998, issue of the *Texas Register* (23 TexReg 919). Changes to the proposed text consist of correction of grammatical errors.

The justification for amending the section is to allow TYC to evaluate a youth's progress more thoroughly.

The amendment will add specific assessment information which clarifies requirements in the TYC treatment programs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public.

The adopted rule implements the Human Resource Code, §61.034.

§87.3. *Resocialization Program.*

(a) Purpose. The purpose of this rule is to identify the agency's philosophy and approach to rehabilitation of juvenile delinquents in order to reduce future delinquent behavior and increase accountability of the youth and programs.

(b) Explanation of Terms Used.

(1) Resocialization Program - the basic program implemented in all Texas Youth Commission (TYC) facilities.

(2) Phases of Resocialization - five competency based phases in the resocialization program used to determine a youth's progress in the program.

(3) Phases Checklist - standardized list of measurements used at every program for individual determination of phase completion.

(c) Each TYC facility will maintain a program of resocialization consisting of four cornerstones: correctional therapy, education, discipline and work.

(d) All aspects of the TYC resocialization program will be competency based with clearly defined performance expectations. Individual progress will be measured monthly and be based on all identified treatment needs and strengths.

(e) Phases of resocialization are progressive. Youth will be assessed by a treatment team at each residential placement for the appropriate phase. Parole youth will be assessed by the assigned parole officer. Higher phases are associated with increased expectations of responsibility and decreased need for direct staff supervision.

(f) TYC facilities shall maintain a structured 16-hour day for all youth. During each day, the youth will work on components of the resocialization program.

(g) TYC facilities shall provide for and youth will participate in a structured, individually appropriate educational program or equivalent.

(h) TYC facilities shall provide and eligible youth may participate in work experiences.

(i) TYC facilities shall provide and youth will participate in regular physical training programs.

(j) TYC facilities shall provide and youth will participate in correctional therapy. Therapy will consist of three types of required group sessions for all youth. Participation in behavior, core intervention, and life skills groups will be required.

(k) Staff responsible for provision of resocialization service delivery will receive appropriate training and certification.

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 July 6, 1998.

TRD-9810684

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: August 28, 1998

Proposal publication date: February 6, 1998

For further information, please call: (512) 424-6244



Subchapter B. Special Needs Offender Programs

37 TAC §87.91

The Texas Youth Commission (TYC) adopts an amendment to §87.91, concerning family reintegration of sex offenders, with changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1919). The changes to the proposed text restructure the sentence including the family members of a sex offender's family and the victim's family.

The justification for amending the section is greater protection of the public.

The amendment will clarify that certain requirements involving therapy treatment apply to the family members of both the victims and the sex offender, committed to TYC, when the victim and the offender are in the same family.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0761, which provides the Texas Youth Commission with the authority to develop programs that encourage family involvement in the rehabilitation of the child.

The adopted rule implements the Human Resource Code, §61.034.

§87.91. Family Reintegration of Sex Offenders.

(a) Purpose. The purpose of this rule is to provide for some protection of the victim through procedures for reintegration of documented sex offenders who return home when the offender's victim or a potential victim lives in the home.

(b) Explanation of Terms Used. Family - As used herein, shall refer to the family members and/or the victim or potential victim who live in the designated home to which the TYC youth will return.

(c) The offender, the victim and the family must have received treatment specific to the sexual offense prior to the youth's return to his/her home such that:

(1) the family demonstrates knowledge and understanding of the sex offender's behavior;

(2) the family agrees to implement specific strategies to ensure the ongoing safety of the victim or potential victims;

(3) the victim has demonstrated sufficient progress in therapy to be ready for the offender to return home. See (GAP)§81.35 of this title (relating to Involvement of Victims); and

(4) the offender has demonstrated sufficient progress in therapy to be ready for the offender to return home. See (GAP)§81.35 of this title (relating to Involvement of Victims).

(d) Direct contact must occur between the therapists in which a specific reintegration plan is defined and mutually agreed upon.

(e) At a minimum, the reintegration plan must include at least one face-to-face contact between offender and victim facilitated by one or both therapists and not in the home.

(f) Based upon a successful initial meeting between offender and victim, an overnight furlough is arranged.

(g) Actual home placement should occur only after mutual agreement between PSW(s), therapists, victim and offender that trial visits have been successful.

(h) There must be a specific plan for continued treatment and supervision for the offender in the community.

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 July 6, 1998.

TRD-9810677

Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6244



Chapter 91. Program Services

Subchapter A. Basic Services

37 TAC §91.21

The Texas Youth Commission (TYC) adopts the repeal of §91.21, concerning moral values, worship and religious education, without changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1920).

The justification for the repeal is greater protection for the public and TYC youth.

The repeal will allow for the publication of a new section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

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 July 6, 1998.

TRD-9810679

Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6244



Subchapter C. Youth Employment and Work

37 TAC §91.61

The Texas Youth Commission (TYC) adopts the repeal of §91.61, concerning youth employment and work, without changes to the proposed text as published in the February 6, 1998, issue of the *Texas Register* (23 TexReg 921).

The justification for the repeal is increased structure within TYC programs and greater protection for the public.

The repeal will allow for the publication of a new section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

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 July 6, 1998.

TRD-9810682

Steve Robinson

Executive Director

Texas Youth Commission

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Proposal publication date: February 6, 1998

For further information, please call: (512) 424-6244



37 TAC §91.65

The Texas Youth Commission (TYC) adopts the repeal of §91.65, concerning payment for youth employment by TYC, without changes to the proposed text as published in the February 6, 1998, issue of the *Texas Register* (23 TexReg 922).

The justification for the repeal is greater protection for the public and TYC youth.

The repeal will allow for the publication of a new section which will provide TYC youth with opportunities for compensated and uncompensated work experience.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

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 July 6, 1998.

TRD-9810680

Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6244



Subchapter D. Health Care Services

37 TAC §91.89

The Texas Youth Commission (TYC) adopts the repeal of § 91.89, concerning suicide alert, without changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1921).

The justification for the repeal is greater protection for TYC youth.

The repeal will allow for the publication of a new section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

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 July 6, 1998.

TRD-9810676

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: August 28, 1998

Proposal publication date: February 27, 1998

For further information, please call: (512) 424-6244



The Texas Youth Commission (TYC) adopts new §91.89, concerning suicide alert, with changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1921). Changes to the proposed text consist of grammatical corrections only.

The justification for the new rule is greater protection for youth placed in TYC facilities.

The new rule will establish a process whereby mental health professional(s) assess suicide risk and assign a suicide alert status or remove a youth from the status.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted new rule implements the Human Resource Code, §61.034.

§91.89. Suicide Alert.

(a) Purpose. The purpose of this rule is to establish procedures for screening, assessing, and treating as specified youth who may be at risk for suicide.

(b) Applicability. This rule applies to all youth who are currently assigned to placement in TYC institutions, halfway houses and contract residential facilities. This policy does not apply to youth living at home or in a home substitute except where specifically stated.

(c) Explanation of Terms Used.

(1) Mental Health Professional (MHP) - An individual who is a Psychiatrist, doctoral level Psychologist, Associate Psychologist (masters level), or a Social Worker with an Advanced Clinical Practitioner designation (LMSW-ACP).

(2) Designated Mental Health Professional(s) - The individual having the primary responsibility and accountability for the evaluation, monitoring and treatment of all youth referred as suicide risks. This individual shall be a Psychiatrist or a licensed Psychologist.

(d) Suicide Alert Assignment/Removal Process.

(1) At risk youth will receive suicide screenings and/or assessments.

(A) A suicide risk screening will be initiated by a Primary Service Worker (PSW) or the MHP equivalent in contract care when a youth expresses suicidal intent through words, or when the youth's record indicates a history of prior suicidal ideation.

(B) A suicide risk assessment will be initiated by a MHP when a screening indicates a risk for suicidal action, when youth expresses suicidal intent through actions, or when the youth's record indicates a history of prior suicidal actions.

(2) A designated MHP shall determine whether a youth is a suicide risk based upon a clinical assessment. Only the designated MHP may place a youth on suicide alert process or authorize the youth's return to regular schedule.

(3) A youth may be removed from suicide alert status only by the designated MHP who placed the youth on alert after the youth has stabilized.

(4) Youth on suicide alert status may not be moved to another placement unless:

(A) the receiving placement is a TYC institution, residential treatment center or other placement having on-site psychiatric or psychological staff; or

(B) the designated MHP at the sending site approves the transfer following consultation between the MHPs at the sending and receiving sites.

(5) Youth who have been on suicide alert within six months prior to a placement change are reevaluated by a MHP at the receiving facility following a placement change.

(e) Implementation Rules.

(1) All staff, including parole officers, is responsible for reporting a youth believed to be at risk for suicide to a designated qualified MHP in a TYC facility.

(2) Facility staff shall be informed when a youth is placed on suicide alert status.

(3) All staff of a contract residential setting shall be informed when a youth is placed on suicide alert status and are responsible for following that setting's approved suicide alert procedure.

(4) All direct care staff in TYC operated facilities and in contract residential settings will receive suicide prevention training.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810675

Steve Robinson

Executive Director

Texas Youth Commission

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Proposal publication date: February 27, 1998

For further information, please call: (512) 424-6244

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 112. Personal Attendant Services Program

40 TAC §§112.1-112.9

The Texas Rehabilitation Commission adopts new §§112.1-112.9, concerning Personal Attendant Services Program. Sections 112.1-112.4, 112.7-112.9 are adopted with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5645). Section 112.5 and §112.6 are adopted without changes and will not be republished.

This chapter is being created to implement the Personal Attendant Services Program.

Comments were received from two individuals and one organization, the Coalition of Texans with Disabilities, recommending changes to clarify the rules. The Texas Rehabilitation Commission adopts §§112.1-112.4, 112.7-112.9 with changes to incorporate recommendations made by the commenters.

The new sections are 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.

§112.1. Purpose.

(a) The purpose of the Texas Rehabilitation Commission (TRC) Personal Attendant Services (PAS) Program is to provide long-term client managed personal assistance services to persons with disabilities who require such services to maintain employment.

(b) This program is funded entirely with state funds.

§112.2. *Services Provided.*

(a) Services available in the Texas Rehabilitation Commission (TRC) Personal Attendant Services (PAS) program include attendant services in the following areas: personal care, home management, and transportation.

(b) Personal care includes, but is not limited to, assistance with:

- (1) transferring;
- (2) dressing and undressing;
- (3) eating;
- (4) meal preparation;
- (5) bathing;
- (6) grooming;
- (7) toileting;
- (8) health related tasks when delegated by a physician.

(c) Home management includes, but is not limited to, assistance with:

- (1) housecleaning;
- (2) laundering;
- (3) shopping;
- (4) washing dishes.

(d) Transportation includes, but is not limited to, assistance with:

- (1) arranging for transportation;
- (2) providing assistance with transportation as needed;
- (3) minor wheelchair maintenance and cleaning.

(e) Services may be provided in the consumer's home and/or in the workplace. Services will be available based upon the "Individual Needs Assessment" and documented in a "Plan for Personal Attendant Services" prepared by the contractor and agreed to and signed by the client.

§112.3. *Eligibility.*

(a) To be eligible for the Texas Rehabilitation Commission (TRC) Personal Attendant Services (PAS) program, applicants must:

(1) be working a minimum of 20 hours per week and earning a salary for a public or private employer for at least minimum wage, or self employed with a net income of at least \$300 per month; and

(2) have one or more disabilities; and

(3) have a need for one or more personal attendant services due to their disability(ies).

(b) For purposes of eligibility for the TRC PAS program, an individual with a disability is an individual who has a physical or mental impairment which results in a substantial impediment to functioning independently in the home and community, and which

results in a substantial impediment to employment, and who requires personal attendant services to engage in employment.

§112.4. *Contractor Responsibilities.*

Personal Attendant Services (PAS) contractor responsibilities are:

(1) provide PAS services to a specific number of eligible consumers in a specific geographic area as outlined in their contract with Texas Rehabilitation Commission (TRC);

(2) provide outreach in specific counties as outlined in the contract with TRC;

(3) employ a qualified "program evaluator" who:

(A) determines service eligibility;

(B) determines that the TRC PAS program is the most appropriate alternative for the client;

(C) performs an "Individual Needs Assessment" to determine the service needs of the individual, and develops a "Plan for Personal Attendant Services" for each eligible consumer.

(i) "Individual Needs Assessments" must be performed annually to determine continued need for PAS services based on the following listed in subclauses (I)-(II) of this clause:

(I) activities of daily living with codes for levels of assistance needed; and

(II) assistance needed due to impairments rated in terms of severity.

(ii) The "Plan for Personal Attendant Services" must contain the number of allowed hours, the co-pay amount based upon income determination, and the choice of method of payment to the attendant;

(D) maintains a waiting list if the contractor is operating at full capacity. Services are provided as space becomes available and in chronological order according to the date eligibility was established;

(E) determines the client's copayment annually ;

(F) offers the applicant an informed choice among three methods of paying the attendant: direct payment by contract agency, "block grant", or "voucher";

(G) develops an agreement between the client and the contract agency detailing the responsibilities of both parties;

(H) verifies that there are standing physician orders in accordance with the Texas Medical Practices Act (Act) and all related state and federal statutes and regulations if the attendant(s) provides the client any of the health-related services which the Act specifies, and ensures that the contractor maintains a copy of the standing physician's orders in the client's file; and

(I) negotiates with the applicant and contract agency the number of hours and tasks authorized.

§112.7. *Copayment.*

(a) Basis and calculation of copayment:

(1) The copayment amount is based on the monthly net income of both the client and the client's spouse.

(2) The copayment schedule is specified in each client services contract between the providers and the Commission.

(b) Net income. Net income is computed by subtracting allowable monthly deductions from monthly total income, after income exclusions have been applied.

(c) Determination of Monthly Total Income. The applicant's/client's monthly total income is the total of the following listed in paragraphs (1)-(13) of this subsection:

- (1) the total earnings of the applicant/client and spouse including self employment;
- (2) social security and railroad retirement benefits;
- (3) dividends and interest;
- (4) net income from rental of a house, store, or other property;
- (5) net income from lease of mineral rights;
- (6) income from mortgages or contracts;
- (7) public assistance or welfare payments. These payments include AFDC, SSI, and general assistance (cash payments from a county or city);
- (8) pensions, annuities, and irrevocable trust funds;
- (9) veterans' pensions and compensation checks;
- (10) educational loans and grants;
- (11) unemployment compensation, worker's compensation and disability payments;
- (12) alimony; and
- (13) net income from the client's share of a life estate.

(d) Income exclusions. The applicant's/client's monthly total income excludes:

- (1) loans and grants such as scholarships;
- (2) in-kind income such as rent subsidies;
- (3) infrequent or irregular income if the total does not exceed \$20 a month from all sources; and
- (4) reimbursement from an insurance company for health insurance claims.

(e) Allowable monthly deductions. Allowable monthly deductions from the applicant's/client's monthly total income include the following listed in paragraphs (1)-(5) of this subsection:

- (1) the cost of tuition and books when the applicant/client is a student;
- (2) \$93 deducted for each of the applicant/client, spouse, and each dependent supported by the applicant/client and spouse;
- (3) FICA withholding, and any other required deductions from wages or salaries;
- (4) expenditures and savings for large disability related expenses and equipment such as vans, vehicle modifications, and power wheelchairs, with a per-item value over \$500; and
- (5) actual monthly expenditures for child care costs for children 0 - 6 years up to \$250 each, and 6 - 12 years up to \$100 each.

§112.8. Suspension or Termination of Services.

- (a) Suspension of services.

(1) The contract agency may suspend services before the end of the period for which duties have been authorized. The client must be notified of the suspension.

(2) Suspension may occur for one of the following reasons listed in subparagraphs (A)-(E) of this paragraph:

- (A) the client leaves the state or moves out of the geographical area served by the contract;
- (B) the client receives services through a Medicaid waiver, or other publicly supported source;
- (C) the client does not agree with the copayment or does not pay the copayment;
- (D) the client is repeatedly abusive to attendants or demands additional hours or tasks not in the service plan; or
- (E) the client is admitted to a hospital or other institution;

(3) Services must be reinstated upon resolution of the circumstances that initiated the service suspension. If attempts to resolve the issue are unsuccessful after 30 days of the date of suspension, the contract agency must initiate termination of services.

(b) Termination of services. The contract agency provides the client with written notification that services are being terminated when:

- (1) the client fails to meet eligibility criteria;
- (2) the physician's statement expires;
- (3) non-resolution of threats to the health or safety of the attendant or others;
- (4) the client dies;
- (5) the client is unemployed for six months; or
- (6) funding for the contract becomes unavailable.

§112.9. Client Appeals.

An applicant/client is entitled to appeal the suspension or termination of services, or decisions regarding determination of number of service hours. The applicant/client can appeal the decision of the contract agency to the Texas Rehabilitation Commission (TRC) Program Specialist for the Personal Attendant Services (PAS) program, in accordance with the provisions of Chapter 104 of this title (relating to Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official). The client will be notified in writing of his/her right to appeal.

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 July 13, 1998.

TRD-9811030

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Effective date: August 2, 1998

Proposal publication date: May 29, 1998

For further information, please call: (512) 424-4050



== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Commission on the Arts

Title 13, Part III

The Texas Commission on the Arts files this notice of intention to review Procedural Rules. 31.1-31.10 (relating to Agency Procedures), 35.1 (relating to the Texas Arts Plan) and 37.22-37.27 (relating to the Application Forms and Instructions for Financial Assistance).

The assessment made by the agency at this time indicates that the reasons for adopting or readopting these rules continues to exist.

Comments on this proposal may be submitted to Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406 or voice telephone (512) 463-5535 extension 42324.

TRD-9811148

Fred Snell

Director of Finance and Administration

Texas Commission on the Arts

Filed: July 15, 1998

Texas Commission for the Blind

Title 40, Part IV

Texas Commission for the Blind Title 40, Part IV The Texas Commission for the Blind files this notice of its intent, beginning August 3, to review all sections in Chapter 172 pertaining to Advisory Committees and Councils (§§172.1-172.3) and all sections in Chapter 173 pertaining to Donations (§§173.1-173.8) in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167. The Commission will be considering whether the reasons for adopting these rules still exist and whether amendments are needed. The public is invited to make comments on the rules as they stand in the Texas Administrative Code within 30 days following the publication of this notice in the *Texas Register*.

The Commission's Board will consider comments received in response to this notice at a meeting tentatively scheduled on November 6, 1998. Any changes to the rules proposed by the Commission after reviewing the rules and considering comments received in response to this notice will appear thereafter in the proposed rules section of

the *Texas Register* and will be adopted in accordance with state rule-making requirements.

Comments on the review may be mailed to Texas Commission for the Blind, Attention: Jean Crecelius, Policy and Rules Coordinator, P. O. Box 12866, Austin, TX 78711.

TRD-9810971

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Filed: July 13, 1998



Texas Motor Vehicle Board

Title 16, Part VI

The Texas Motor Vehicle Board of the Texas Department of Transportation files this notice of intention to review Title 16, Texas Administrative Code, Chapter 103, General Rules relating to licensing, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As required by §167, the Board will accept comments regarding whether the reason for adopting each of the rules in 16 TAC Chapter 103 continues to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Brett Bray, Director, Motor Vehicle Division, Texas Department of transportation, P. O. Box 23293, Austin, Texas 78768-2293 or at (512) 416-4910.

TRD-9810926

Brett Bray

Director, Motor Vehicle Division

Texas Motor Vehicle Board

Filed: July 10, 1998



Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.32 relating to Automatic Dial Announcing Devices

pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 19466 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.32 and is proposing new §26.125 relating to Automatic Dial Announcing Devices to replace this section. The proposed repeal and new rule 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 §23.32. Automatic Dial Announcing Devices.

TRD-9810872

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 9, 1998



The Public Utility Commission of Texas files this notice of intention to review §23.33 relating to Telephone Solicitation pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 19467 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.33 and is proposing new §26.126 relating to Telephone Solicitation to replace this section. The proposed repeal and new rule 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 §23.33. Telephone Solicitation.

TRD-9810873

Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: July 9, 1998



Texas Rehabilitation Commission

Title 40, Part II

The Texas Rehabilitation Commission proposes to review the following sections from Chapter 112, pursuant to the Appropriations Act of 1997, HB1, Article IX, Section 167. As part of the review process, the Texas Rehabilitation Commission is proposing to readopt the following sections without changes:

§112.1 §112.2 §112.3 §112.4 §112.5 §112.6 §112.7 §112.8 §112.9

Sections 112.1-112.9 are new rules being adopted in this issue of the *Texas Register*. The sections will take effect on August 2, 1998. The Commission's reason for adopting these sections continues to exist.

TRD-9811029

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Adopted Rule Review

Texas Board of Chiropractic Examiners

Title 22, Part III

The Texas Board of Chiropractic Examiners has completed the review of Chapter 71, relating to applications and applicants as noticed in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4575). As part of the review process, the board readopts, with proposed changes §§71.1-71.3, 71.5-71.7, 71.10, and 71.11 in this issue of the *Texas Register*, pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. The board finds that the reasons for adopting these sections continue to exist. The board does not readopt and is repealing §71.8 and §71.9 in this issue of the *Texas Register*.

No comments were received on the §167 review requirement for Chapter 71 as to whether the reason for adopting the rules continues to exist.

TRD-9811040

Joyce Kershner

Director of Licensure

Texas Board of Chiropractic Examiners

Filed: July 13, 1998

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 4 TAC §65.17(a)(1)(A)

(A)

Total Nitrogen (N)	_____%
Available Phosphate (as P ₂ O ₅)	_____%
Soluble Potash (K ₂ O)	_____%

Figure: 4 TAC §65.17(a)(1)(B)

(B)

Total Nitrogen (N)	_____%
_____ % Ammoniacal Nitrogen	
_____ % Nitrate Nitrogen	
_____ % Water Insoluble Nitrogen	
_____ % Urea Nitrogen	
_____ % (Other recognized and determinable forms of N)	
Available Phosphate (as P ₂ O ₅)	_____%
Soluble Potash (K ₂ O)	_____%

Figure: 4 TAC §65.17(g)

Table 1 Allowable Concentration of Trace Elements in Commercial Fertilizers When Conforming to §65.17(d)(2)	
Element	Maximum, ppm
Arsenic	41
Cadmium	39
Copper	1500*
Lead	300
Mercury	17
Molybdenum	18*
Nickel	420
Selenium	100*
Zinc	2800*

*When not guaranteed

Figure: 4 TAC §65.24(3)(B)

Table 2 Cumulative Element Loading Rate When Conforming to §65.17(d)(1)	
Element	lbs/acre/year
Arsenic	0.37
Cadmium	0.35
Copper	13.4*
Lead	2.68
Mercury	0.15
Molybdenum	0.16*
Nickel	3.75
Selenium	0.89*
Zinc	25.0*

*When not guaranteed

Figure: 16 TAC §26.126(b).

"TELEPHONE SOLICITATION

"Texas law provides certain protections for a person who receives a telephone solicitation at a residence.

"A telephone solicitor must:

- * identify himself or herself by name;
- * identify the business on whose behalf he or she is calling;
- * identify the purpose of the call; and
- * identify the telephone number at which the person, company, or organization making the call may be reached.

"A telephone solicitor may not call a residence before 9:00 a.m. or after 9:00 p.m. on a weekday or Saturday or before noon or after 9:00 p.m. on Sunday.

"If a telephone solicitor uses an automatic dialing/announcing device, the machine must disconnect from your line within 30 seconds after termination of the call.

"Exceptions: The requirements above do not apply to telephone solicitations made at your request, or solicitations made in connection with an existing debt or contract, or calls from a telephone solicitor with whom you have a prior or existing business relationship.

"If you use a credit card to purchase consumer goods or a service from a telephone solicitor other than a public charity (an organization exempt from federal income tax under the Internal Revenue Code §501(c)(3)), the seller must:

- * offer a full refund for the return of undamaged and unused goods within seven days after you receive the goods or service (the seller must process the refund within 30 days after you return the merchandise or cancel your order for undelivered goods or service); or

Figure: 16 TAC §26.126(b) continued.

- * provide you with a written contract fully describing the goods or service being offered, the total price charged, the name, address, and business phone of the seller, and any terms and conditions affecting the sale.

"Complaints. The Attorney General of Texas investigates complaints relating to a violation of this law, which is found at the Business and Commerce Code Chapter 37. If you have a complaint about a telephone solicitor whom you believe has violated this law, contact:

Consumer Protection Division, Office of the Attorney General of Texas,
P.O. Box 12548, Austin, Texas 78711, (512) 463-2070.

"Another law, found at Public Utility Regulatory Act §55.151 and §55.152, requires a telephone solicitor to make every effort not to call a consumer who asks not to be called again. Complaints relating to a violation of this law are investigated by the Public Utility Commission of Texas. If you have a complaint about repeated solicitation from a telephone solicitor you have asked not to call you again, contact:

Office of Customer Protection, Public Utility Commission of Texas, P.O.
Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or 1-888-782-
8477. Hearing- and speech-impaired individuals with text telephones
(TTY) may contact the commission at (512) 936-7136.

"Be advised that you may have additional rights under federal law. Please contact the Federal Trade Commission or the Federal Communications Commission for further information on these additional rights."

Figure: 25 TAC §821.55(2)

The Texas Board of Orthotics and Prosthetics licenses prosthetists, orthotists, prosthetist assistants, and orthotist assistants and accredited prosthetic/orthotic facilities. Members of the public may notify the board of complaints concerning the practice conducted by a prosthetist, orthotist, orthotist assistant or prosthetist assistant, or the conditions at a board accredited facility.

The board's mailing address is:

Texas Board of Orthotics and Prosthetics
1100 West 49th Street
Austin, Texas 78756-3183
(512) 834-4520
Fax (512) 834-6677
Consumer Complaint Hotline 1-800-942-5540

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 documentation 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 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

FIGURE 1: 28 TAC · 34.814(f)

Expired 1 to 90 days

	1 Renewal Fee	+ (Initial Fee)	= Total Fee
Manufacturer	\$1,000.00	\$500.00	\$1,500.00
Distributor	1,500.00	750.00	2,250.00
Jobber	1,000.00	500.00	1,500.00
Importer	200.00	400.00	300.00
Pyrotechnic Operator	25.00	12.50	37.50
<u>Pyrotechnic Special Effects Operator</u>	<u>25.00</u>	<u>12.50</u>	<u>37.50</u>
[Public Display License]	400.00	200.00	600.00

Expired 91 days to 2 years

	1 Renewal Fee	+ (Initial Fee)	= Total Fee
Manufacturer	\$1,000.00	\$1,000.00 ¹	\$2,000.00
Distributor	1,500.00	1,500.00	3,000.00
Jobber	1,000.00	1,00.00	2,000.00
Importer	200.00	200.00	400.00
Pyrotechnic Operator	25.00	25.00	50.00
<u>Pyrotechnic Special Effects Operator</u>	<u>25.00</u>	<u>25.00</u>	<u>50.00</u>
[Public Display License]	400.00	400.00	800.00

Table 1

Minimum Separation Distances of [~~Class C~~] Fireworks 1.4G, Processing Buildings, and Fireworks Storage Buildings from Inhabited Buildings, Passenger Railways, and Public Highways

NET WEIGHT OF FIREWORKS ¹	DISTANCE FROM PASSENGER RAILWAYS AND PUBLIC HIGHWAYS	DISTANCE FROM INHABITED BUILDINGS
<u>Pounds</u>	<u>Feet</u>	<u>Feet</u>
100	50	50
200	50	60
400	50	70
600	50	80
800	50	90
1,000	50	100
2,000	58	115
3,000	62	124
4,000	65	130
5,000	68	135
6,000	70	139
8,000	73	140
10,000	75	150

Note 1: Net weight in Table 1 is the weight of all pyrotechnic and explosive composition and fuse only.

Table 2

Minimum Separation Distances at Fireworks Manufacturing Plants

NET WEIGHT FIREWORKS ¹	DISTANCE OF MAGAZINES AND STORAGE BUILDINGS FROM PROCESS BUILDINGS AND NONPROCESS BUILDINGS ²		DISTANCE BETWEEN PROCESS BUILDINGS AND BETWEEN PROCESS AND NONPROCESS BUILDINGS ²	
	[Class-C]	[Class-B]	[C-Class]	[Class-B]
	Fireworks	Fireworks	Fireworks	Fireworks
	<u>1.4G</u>	<u>1.3G</u>	<u>1.4G</u>	<u>1.3G</u>
Pounds	<u>Feet</u>	<u>Feet</u>	<u>Feet</u>	<u>Feet</u>
100	30	30	37	57
200	30	35	37	69
400	30	44	37	85
600	30	51	37	97
800	30	56	37	105
1,000	30	60	37	112
2,000	30	76	37	172
3,000	35	87	48	222
4,000	38	95	60	264
5,000	42	103	67	300
6,000	45	109	72	331
8,000	50	120	78	382
10,000	54	129	82	423

Note 1: Net weight is the weight of all pyrotechnic and explosive compositions and fuse only.

Note 2: For the purpose of applying the separation distances in Table 2, a process building includes a mixing building, any building in which pyrotechnic or explosive compositions are pressed or otherwise prepared for finishing and assembling, and any finishing and assembling building. Nonprocess buildings means office buildings, warehouses, and other fireworks plant buildings where no fireworks or explosive compositions are processed or stored.

Table 3
Table of Distances for Storage of Fireworks 1.3G [~~Low Explosives~~]

Pounds ¹ Over	Net Over	FROM INHABITED BUILDING Distance	FROM PUBLIC RAILROAD AND HIGHWAYS Distance	FROM ABOVE GROUND MAGAZINE (feet)	
		(feet)	(feet)	Unbarricaded	Barricaded
0	1,000	75	75	50	36
1,000	5,000	115	115	75	61
5,000	10,000	150	150	100	78
10,000	20,000	190	215	125	98
20,000	30,000	215	215	145	112
30,000	40,000	235	235	155	124
40,000	50,000	250	250	165	135
50,000	60,000	260	260	175	145
60,000	70,000	270	270	185	155
70,000	80,000	280	280	190	165
80,000	90,000	295	295	195	175
90,000	100,000	300	300	200	185
100,000	200,000	375	375	250	285
200,000	300,000	450	450	300	385

Note 1: Net weight is the weight of all pyrotechnic and explosive compositions and fuse only.

FIGURE NO. 28 TAC 34.826(c)(2)

Mortar Separation Distances

Mortar	Spectator	Viewing	
	Areas		
	Parking Areas	Health Care & Storage	of
	1 & 2-Family Dwellings	Penal Facilities	Hazardous
			Materials
2 in.	100 ft.	600 ft.	600 ft.
3 in.	125 ft.	600 ft.	600 ft.
4 in.	125 ft.	600 ft.	600 ft.
5 in.	150 ft.	600 ft.	600 ft.
6 in. & larger	200 ft.	600 ft.	600 ft.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Tuesday, July 21, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

AGENDA:

Information Conferences

1. File No. 97-11-08L
2. File No. 98-04-04L
3. File No. 98-05-19L
4. File No. 97-09-29L

Discussion Items

1. File No. 97-08-031
2. Century Business Service, Inc.

Investigations

1. File No. 98-03-02L
2. File No. 98-03-06L
3. File No. 98-03-07L
4. File No. 98-04-06L
5. File No. 96-09-07L
6. File No. 98-03-32L
7. File No. 98-04-05L

(All discussion of investigative files will be in Executive Session.)

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: July 9, 1998, 1:55 p.m.

TRD-9810882



Wednesday, July 22, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Behavioral Enforcement Committee

AGENDA:

A. Investigations

1. File No. 98-05-03L
2. File No. 98-05-04L
3. File No. 98-05-02L
4. File No. 98-02-14L
5. File No. 98-02-03L
6. File No. 97-10-25L
7. File No. 98-05-01L

B. Discussion Items

1. Good, Tracy D.-Independence
2. Thorp, Rebecca D.-Advertising
3. Mann, R.J. and Co.-Registration
4. Horne CPA Group-Firm name

C. Informal Conferences

1. File No. 97-07-11L
2. File No. 97-10-22L
- File No. 97-10-23L
3. File No. 98-01-10L
- File No. 98-01-11L
4. File No. 98-01-12L
5. File No. 97-11-04L

(All discussion of investigative files will be in Executive Session.)

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: July 9, 1998, 1:55 p.m.

TRD-9810883



State Office of Administrative Hearings

Tuesday, July 21, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-1284- Petition of Houston Lighting and Power Company to Reconcile Eligible Fuel Revenues and Expenses (PUC Docket No. 18753).

Contact: William G. Newchurch, 300 North 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: July 9, 1998, at 1053 a.m.

TRD-9810857



Texas Commission on Alcohol and Drug Abuse

Wednesday, July 22, 1998, Noon

501 West Sanford Street, Conference Room 110, Arlington, Human Services Center

Arlington

Regional Advisory Consortium (RAC), Region 3

AGENDA:

call to order; welcome and introductions of guests; approval of minutes; update on implementation of recommendations from RAC convenors meeting in March; NorthStar Project; new business; public comment; and adjournment.

Contact: Albert Ruiz, 9001 North IH-35, Suite 105, Austin, Texas 78753-5233, 512-349-6607 or 800/83-9623, Ext. 6607.

Filed: July 10, 1998, at 12:04 p.m.

TRD-9810939



Texas Board of Architectural Examiners

Friday, July 24, 1998, 10:00 a.m.

The Hobby Building 333 Guadalupe Street, Tower II, Suite 2-350

Austin

Board Meeting Conference Call

AGENDA:

I. call to order; II. roll call; III. recognition of guests; IV. chairman's opening remarks' V. consider/act on agreed orders; VI. public comments; VII. chairman's closing remarks; VII. adjournment.

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 Carolyn Lewis At 512/305-8525 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Cathy L. Hendricks, P.O. Box 12337, Austin, Texas 78711-2337, 512/305-8535.

Filed: July 13, 1998, 8:51 a.m.

TRD-9810979



Advisory Board of Athletic Trainers

Wednesday, July 22, 1998, 9:00 a.m.

Monroe Board Room-Dee Kelly Alumni Center, Texas Christian University, 2920 Stadium Drive

Austin

AGENDA:

The board will meet to receive input from interested parties, and will discuss and possibly act on: approval of the minutes of the May 1, 1998, meeting; program director's report; report on the sunset review process; financial report for fiscal year 1998; executive secretary's report; committee report (Administrative Services; Continuing Education; and Education); proposed rule amendments concerning qualifications for athletic trainer licensure (25 TAC §313.5); comments received concerning proposed rule amendments (25 TAC, Chapter 313) as published in the June 5, 1998, issue of the Texas Register (23 TexReg 5930); final adoption of proposed rules (25 TAC, Chapter 313) as published in the June 5, 1998, issue of the Texas Register (23 TexReg 5930); plan and notice of intent to review rules in compliance with Rider 167 of the General Appropriations Act; election of officers; announcements and comments; other business not requiring action; and the setting of the next meeting date for the board.

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: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, 512/834-6615.

Filed: July 10, 1998, 10:57 a.m.

TRD-9810930



State Bar of Texas

Thursday, July 16, 1998, 1:30 p.m.

Del Lago Conference Center and Resort, Sam Houston II Room, 600 Del Lago

Austin

Executive Committee

AGENDA:

call to order/roll call/reports from the chair; the president; the president-elect; the executive director; the general counsel; the president of the Texas Young Lawyer's Association; the immediate past president; and the supreme court liaison/adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1/800/204-2222.

Filed: July 8, 1998, 1:29 p.m.

TRD-9810808



Friday, July 17, 1998, 8:00 a.m.

Del Lago Conference Center and Resort, Tejas Room 2, 600 Del Lago Boulevard

Montgomery

Board of Directors

AGENDA:

welcome/remarks and introduction of special guests/presentations by Charles F. Robinson and Michael R. Hammond/breakout sessions/wrap up-summary/adjournment.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1/800/204-2222.

Filed: July 9, 1998, 4:18 p.m.

TRD-9810902



Texas Cancer Council

Tuesday, July 21, 1998, 10:30 a.m.

Love Field Conference Center, Dallas Love Field Airport

Dallas

Executive Committee

AGENDA:

The Committee will discuss and possibly action on: minutes of the May 29, 1998 meeting; review and approval of the FY 2000-2001 Legislative Appropriations Request, and future meeting dates. The Committee will then adjourn.

Person with disabilities who plan to attend this meeting and how may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or braille, are requested to contact Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Mickey L. Jacobs, P.O. Box 12097, Austin, Texas 78711, 512/463-3190.

Filed: July 14, 1998, 8:45 a.m.

TRD-9811075



Tuesday, August 4, 1998, 4:00 p.m.

Conference Room, Texas Cancer Council, 211 East 7th Street, Suite 701

Austin

Contract Management Committee

AGENDA:

The Committee will discuss and possibly take action on: minutes of the March 30, 1998 meeting; and update on the third quarter performance measures; FY 1999 project applications, staff analyses, and rebuttal comments; and updates on policies and procedures and future meeting dates. The Committee will then adjourn.

Person with disabilities who plan to attend this meeting and how may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or braille, are requested to contact Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Lisa Nelson, P.O. Box 12097, Austin, Texas 78711, 512/463-3190.

Filed: July 15, 1998, 11:52 a.m.

TRD-9811146



Wednesday, August 5, 1998, 8:00 a.m.

Durham Room, Texas Medical Association, 401 West 15th Street

Austin

Executive Committee

AGENDA:

The Committee will discuss and possibly action on: minutes of the July 21, 1998 meeting; review council meeting agenda and actions items; the executive direction's report; and future meeting dates. The Committee will then adjourn.

Person with disabilities who plan to attend this meeting and how may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or braille, are requested to contact Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Mickey L. Jacobs, P.O. Box 12097, Austin, Texas 78711, 512/463-3190.

Filed: July 15, 1998, 11:51 a.m.

TRD-9811144



Wednesday, August 5, 1998, 9:00 a.m.

Dr. May Owen Conference Room, Texas Medical Association, 401 West 15th Street

Austin

Board of Directors

AGENDA:

The Council will discuss and possibly act on: minutes of the May 29, 1998 meeting, the Executive Director's report; adoption of the FY 2000-2001 Legislative Appropriations Requests; FY 1998 fiscal and programmatic issues that include a summary of FY 1998 third quarter performance measures, an update on the FY 1998 budget report; adoption of the FY 1999 operating budget; TCC policy issues; FY 1999 budget overview; the report from the Contract Management Committee regarding FY 1999 project funding that includes the projects: Case Management for Promesa Salud-Planned Parenthood/Cameron and Willacy, WE CARE-UTMB Galveston, Office of Tobacco Prevention and Control-Texas Department of Health, Hispanic Breast Health Outreach Program-The ROSE, Cancer Intervention Project-Titus County Memorial Hospital, Texas STEP-Southwest Texas State University, Cancer Education Outreach Program-Grayson County Health Department, Cancer Risk Reduction Education-Agricultural Extension Service, Texas Comprehensive School Health Network-Texas Department of Health, School, Community-based Adolescent Tobacco Use Cessation-University of Houston, Minority Cancer Prevention Project-Tarrant County Health Department, Community Based Cancer Prevention and Control Program-Stephen F. Austin University, Impact of Managed Care on Cancer Services-University of Houston, West Texas Cancer Prevention Partnership-Texas Tech University Health Science Center, Texas Cancer Data Center-M.D. Anderson Cancer Center, Spit Tobacco Prevention Analysis-M.D. Anderson Cancer Center Physician Oncology Education Program-Texas Medical Association, Nurse Oncology Education Program-Texas Nurses Foundation, Dental Oncology Education Program-Texas A&M Research Foundation, Enhancing Palliative Care Services for Terminally Ill Children-Baylor College of Medicine, and Community Based Model for Enhancing African-

American Women's Breast Cancer Screening Outreach and Case Management Services in Texas-The University of Texas School of Nursing; and future project funding (FY 2000). Council will then adjourn.

Person with disabilities who plan to attend this meeting and how may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or braille, are requested to contact Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Lisa Nelson, P.O. Box 12097, Austin, Texas 78711, 512/463-3190.

Filed: July 15, 1998, 11:52 a.m.

TRD-9811145



Texas Citrus Producers Board

Tuesday, July 21, 1998, 1:00 p.m.

TexaSweet Building, Board Room, 901 Business Park Drive

Mission

AGENDA:

Call meeting to order and opening remarks

Action: approval of minutes from previous meeting; presentation and approval of financial report; plans for 1998-1999 project solicitation, budget need, crop size, and potential sources; Develop list of research needs and priorities; set date for next meeting.

Report: Katie Stavinocha, Texas Department of Agriculture

Discussion: review of 1997-1998 projects; review new or unfinished business.

Adjourn:

Contact: Ray Prewett, 901 Business Park Drive, Mission, Texas 78757, 210/584-15851.

Filed: July 13, 1998, 4:00 p.m.

TRD-9811068



Office of Court Administration

Thursday, August 6, 1998, 10:00 a.m.

State Capitol Extension 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 June 18, 1998 meeting

IV. Overview of issues to be discussed by committee

V. Discussion and committee action on recommendations to Texas Judicial Council regarding language for proposed legislation and rules of court

VI. other business

adjourn

Contact: Slade Cutter, P.O. Box 12066, Austin, Texas 78711-2066, 512/463-1625.

Filed: July 14, 1998, at 3:03 p.m.

TRD-9811090



Texas Department of Criminal Justice

Thursday, July 16, 1998, 8:00 a.m.

St. Anthony Hotel, 300 East Travis Street, Travis Room

San Antonio

Facilities Committee

AGENDA:

I. Call to order

II. Approval of May 21, 1998, facilities committee minutes

III. Committee approval of the budget for the Smith Unit High Security Facility in Lamesa

IV. Committee approval of the budget for the Trusty Dorms (19 locations)

V. Item furnished to the committee for information

1. Snyder Regional Distribution Center

VI. Public comment

VII. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: July 8, 1998, 2:28 p.m.

TRD-9810813



Thursday, July 16, 1998, 9:00 a.m.

St. Anthony Hotel, 300 East Travis Street, Travis Room

San Antonio

Institutional Division Committee

AGENDA:

I. Call to order

II. Overview of Institutional Division

1. Ombudsman Program

2. Post Trauma Program

III. Public Comment

IV. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711,
512/475-3250.
Filed: July 8, 1998, 2:28 p.m.
TRD-9810814



Thursday, July 16, 1998, 10:00 a.m.
St. Anthony Hotel, 300 East Travis Street, Travis Room
San Antonio

Human Resources Committee

AGENDA:

- I. Call to order
- II. Approval of the minutes March 11, 1998, meeting
- III. Update on Timeframe to Fill Positions
- IV. EEO Departmental Update
- V. Workforce Profile Statistical Review
- VI. Public comment
- VII. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711,
512/475-3250.
Filed: July 8, 1998, 2:30 p.m.
TRD-9810815



Thursday, July 16, 1998, 11:00 a.m.
St. Anthony Hotel, 300 East Travis Street, Travis Room
San Antonio

Victims Services Committee

AGENDA:

- I. Call to order
- II. Approval of May 21, 1998, meeting minutes
- III. Discussion on the Inclusion of victim Services in the Agency's Mission Statement
- IV. Public Comment
- V. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711,
512/475-3250.
Filed: July 8, 1998, 2:30 p.m.
TRD-9810816



Thursday, July 16, 1998, 1:00 p.m.

St. Anthony Hotel, 300 East Travis Street, Travis Room
San Antonio

Community Justice Assistance, Parole, and State Jail Divisions
Committee

AGENDA:

- I. Call to order
- II. Approval of the minutes from May 11, 1998, meeting
- III. Report from the Judicial Advisory Council
 1. Treatment Alternatives to Incarceration Programs, Fiscal Year 1999 Funding Recommendations
- IV. Report on the Bexar County Community Supervision and Corrections Department Gang and Surveillance Monitoring Unit
- V. Parole Division Update
- VI. Proposed Modification on state Jail Regions
- VII. Public Comment
- VII. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711,
512/475-3250.
Filed: July 8, 1998, 2:31 p.m.
TRD-9810817



Thursday, July 16, 1998, 2:30 p.m.

St. Anthony Hotel, 300 East Travis Street, Travis Room
San Antonio

Management Information System Committee

AGENDA:

- I. Call to order
- II. Approval of Minutes
 1. November 20, 1997, Meeting
 2. May 21, 1998, Meeting
- III. Discussion of Information Resources Strategic Plan
- IV. Offender Information Management Reengineering Project Status Update
 1. Phase II Project
 2. Phase II Project
- V. Public Comment
- VI. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: July 8, 1998, 3:47 p.m.

TRD-9810819



Thursday, July 16, 1998, 3:30 p.m.

St. Anthony Hotel, 300 East Travis Street, Travis Room

San Antonio

Programs Committee

AGENDA:

- I. Call to order
- II. Report on the Women's Task Force
- III. Discussion on the Proposed Chapel at Smith Unit
- IV. Update on the TDCJ Private Industry Enhancement Program
- V. Update on the Super-Intensive Supervision Program
- VI. Public comment
- VII. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: July 8, 1998, 3:48 p.m.

TRD-9810820



Thursday, July 16, 1998, 4:30 p.m.

St. Anthony Hotel, 300 East Travis Street, Travis Room

San Antonio

Windham School District Board of Trustees

AGENDA:

- I. Regular Session
 - A. Consent Items
 1. Minutes of the May 21, 1998, meeting
 2. Multiple Employment Requests
 3. Consultant Contracts for Special Education Services for 1998-1999
 4. Appraisers for 1998-1999
 5. Bi-Monthly Investment Report
 - B. Renewal of Superintendent's Contract for 1998-1999
 - C. WSD Budget and Salary Schedules for 1998-1999
 - D. Public Comment

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required

to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: July 8, 1998, 2:28 p.m.

TRD-9810812



Friday, July 17, 1998, 8:30 a.m.

St. Anthony Hotel, 300 East Travis Street, LaSalle Room

San Antonio

Board

AGENDA:

- I. Executive Session
 - A. Discussion with attorney concerning: DEI Construction v. TDCJ; Garcia/Aguirre v. TDCJ; Habert Construction v. TDCJ; Krenshaw v. TDCJ; Ruiz v. Scott; and Terrell v. TDCJ cases
 - B. Discussion of matters confidential under State Bar disciplinary Rules of Professional Conduct (Closed in accordance with Section 551.071, Government Code.)
 - C. Discussion of personnel matters. (Closed in accordance with Section 551.074, 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: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: July 8, 1998, 3:48 p.m.

TRD-9810821



Friday, July 17, 1998, 9:30 a.m.

St. Anthony Hotel, 300 East Travis Street, Peraux Room

San Antonio

Texas Board of Criminal Justice

AGENDA:

- I. Regular Session
 - A. Recognitions
 - B. Consent Items
 - C. Approval of the 69th Board of Criminal Justice Meeting Minutes
 - D. Board Liaison and Committee Reports/Division Summaries
 - E. Overview and Discussion of Security Threat Groups
 - F. Report from the Board of Pardons and Paroles
 - G. Internal Audit Report
 - H. Discussion on Contract Facilities
 - I. Approval of Purchases/Contracts Over One Million Dollars
 - J. Proposed Revisions to Board 11.76 —TDCJ Benefit Policy
 - K. Proposed Modifications of State Jail Regions

L. Proposed Revisions to Board Policy 03.46 and Board Policy 03.49

M. Proposed Amendments to Community Justice Assistance Division Standards for CSCD's

N. Facility Issues

O. Naming of Department Facilities

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: July 9, 1998, 2:54 p.m.

TRD-9810890



Texas Council on Purchasing from People with Disabilities

Tuesday, August 4, 1998, 10:00 a.m.

Capitol Extension, Conference Room E2.020, 1400 North Congress Avenue

Pricing Subcommittee Worksession

Austin

AGENDA:

Introduction of Subcommittee Members and Guests;

Discussion on Reporting Requirements; and

Discussion on General Services Commission's Proposed Fair Market

Pricing Procedure for Products and Services

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Erica Goldbloom at 512/463-3244 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Chester Beattle, Jr., 1711 San Jacinto, Austin, Texas 78701, 512/463-3583.

Filed: July 9, 1998, 9:10 a.m.

TRD-9810847



Interagency Council on Early Childhood Intervention

Monday, July 20, 1998, 9:30 a.m.

4900 North Lamar Boulevard

Austin

Board

AGENDA:

Public comment. Presentation and Discussion of the Agency's Legislative Appropriations Request for Years 2000-2001.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services are requested to contact Linda B. Hill at least three days prior to the meeting so that arrangements can be made.

Contact: Linda B. Hill, 4900 North Lamar, Austin, Texas 78751, 512/424-6754.

Filed: July 10, 1998, 9:43 a.m.

TRD-9810916



State Employee Charitable Campaign

Monday, July 20, 1998, 3:30 p.m.

4000 Southpark Drive

Tyler

Local Employee Committee Tyler-Region 4

AGENDA:

I. Call to order

II. Approve minutes of June 17 meeting

III. Review Campaign plan

IV. Consider and take action regarding Development of Agency Campaigns

V. Consider and take action regarding Brochure Bids

VI. Consider and take action regarding Kick-off Breakfast and Agenda

VII. Consider and take action regarding Invitation list for Breakfast

VIII. Report on Honorary Chair

IX. Consider and take action regarding Agenda and Scheduling next meeting

Contact: Dawn Franks, 4000 Southpark Drive, #1200, Tyler, Texas 75703, 903/581-6376.

Filed: July 9, 1998, 10:53 a.m.

TRD-9810858



General Services Commission

Wednesday, July 29, 1998, 10:00 a.m.

One Texas Center, 500 Barton Springs Road, Conference Room 1325

Austin

Vendor Advisory Committee

AGENDA:

I. Call to Order; II. Overview of Procurement Process; III. Overview of State of Texas Vendor Performance Program; IV. Consideration and potential action on Vendor Advisory Committee Operating Rules; V. Consideration and potential action on Vendor Advisory Committee Vision, Mission and Goals; VI. Consideration and potential on development of subcommittees; VII. Open Discussion; VIII. Adjourn.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: July 10, 1998, 11:59 a.m.

TRD-9810937

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Office of the Governor

Wednesday-Thursday, July 22–23, 1998, 12:30 p.m. and 8:30 a.m. (respectively.)

Rio Grande Valley Partnership Offices, FM 1015 and Expressway 83 Weslaco

Texas Strategic Economic Development Planning Commission

AGENDA:

- I. Call to Order open meeting/Quorum Call-Chairman Steve Stephens
- II. Invited testimony on-Panel #1–Regional Economic Development Perspective; Panel #2– Border Issues
- III. General Discussion-Discussion by Commission members on priorities for the final report; next meeting for members.
- IV. Invited testimony on-Panel #3–International Trade-Texas and Mexico; Panel #4–International Trade-Texas and the World
- V. Adjourn

Contact: Terry Karow, P.O. Box 12428, Austin, Texas 78701, 512/463–2198.

Filed: July 14, 1998, 12:54 p.m.

TRD-9811085

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Texas Health Care Information Council

Thursday, July 30, 1998, 9:00 a.m.

Brown Heatly Building, Room 3501, 4900 North Lamar Boulevard Austin

Executive Committee

AGENDA:

The Executive Committee will convene in open session, deliberate, and possibly take formal action on the following items: discussion and recommendations concerning inconsistencies in (1) reporting measures specified in hospital discharge data rules (25 TAC §§1301.11–1301.19), (2) August 31 hospital discharge data reporting deadline and (3) communications to hospitals to not report certain identifying data elements for patients designated as “substance abuse” patients; recommendation concerning proposed changes to 25 TAC §§1301.11–1301.19; discussion and recommendation concerning proposed legislative changes to chapter 108, Texas Health and Safety Code; confirmation of August 28th presentation by Dr. Robert Reid; discussion and recommendation concerning staff proposal to amend Council By-Laws to authorize Executive Committee to provide formal authorization for the Executive Director to enter into contract for up to \$25,000 without prior approval from Council, such action to be reported at the next Council meeting; discussion and recommendation concerning proposed October conference relating to HEDIS and health maintenance organizations; discussion and recommendation concerning proposal to amend Council By-Laws to authorize Chairperson of Executive Committee to make temporary appointments to Executive Committee; staff presentation concerning consumer education program; discussion and recommendation to staff concerning media plan and consumer education program; discussion of Council activities since June 26 Council meeting; discussion of issues relating to patient and provider confidentiality and data security; set future

Council meeting dates (currently only August 28 and October 30) and public comment.

Contact: Jim Loyd, 4900 North Lamar Boulevard, Room 3407, Austin, Texas 78751, 512/424–6492 or fax 512/424–6491.

Filed: July 14, 1998, 3:35 p.m.

TRD-9811094

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Thursday, July 30, 1998, 9:00 a.m.

Brown Heatly Building, Room 3501, 4900 North Lamar Boulevard Austin

Executive Committee

REVISED AGENDA:

The Executive Committee will convene in open session, deliberate, and possibly take formal action on the following items: inconsistencies in (1) reporting measures specified in hospital discharge data rules (25 TAC §§1301.11–1301.19), (2) August 31 hospital discharge data reporting deadline and (3) communications to hospitals to not report certain identifying data elements for patients designated as “substance abuse” patients; proposed changes to 25 TAC §§1301.11–1301.19; proposed legislative changes to Chapter 108, Texas Health and Safety Code; confirmation of August 28th presentation by Dr. Robert Reid; Council By-Laws to authorize Executive Committee to provide formal authorization for the Executive Director to enter into contract for up to \$25,000 without prior approval from Council, such action to be reported at the next Council meeting; proposed October conference relating to HEDIS and health maintenance organizations; proposal to amend Council By-Laws to authorize Chairperson of Executive Committee to make temporary appointments to Executive Committee; staff presentation concerning consumer education program; media plan and consumer education program; Council activities since June 26 Council meeting; patient and provider confidentiality and data security; set future Council meeting dates (currently only August 28 and October 30) and public comment.

The Executive Committee may go into executive session on any agenda item if authorized by the Open Meetings Act, Government Code Chapter 551.

Contact: Jim Loyd, 4900 North Lamar Boulevard, Room 3407, Austin, Texas 78751, 512/424–6492 or fax 512/424–6491.

Filed: July 14, 1998, 4:32 p.m.

TRD-9811096

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Texas Department of Health

Thursday, July 16, 1998, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Strategic Management Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the June 18, 1998, meeting; recent audit activities; approval of general revenue transfers for fiscal year 1998; approval of fiscal year 1999 operating budget and fiscal year 2000–2001 legislative appropriations request; final adoption of rules concerning (instructions and requirements for filing amendment to medical

certification to certificate of death; supplemental birth certificates and access to paternity files; and repeal and new rules concerning procedures for handling requests for providing public information); Office of Border Health update; Sunset update; and a report on 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: July 8, 1998, 4:08 p.m.

TRD-9810824



Thursday, July 16, 1998, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Human Resources Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the June 18, 1998, meeting; appointments to the Medical Radiologic Technologist Advisory Committee; program and budget briefing for the Meat Safety Assurance Division; and a review of advisory committees.

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: July 8, 1998, 4:09 p.m.

TRD-9810825



Thursday, July 16, 1998, 2:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health Financing Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the June 18, 1998, meeting; proposed rules concerning (Tuberculosis clinic services reimbursed by the Medicaid program; and reimbursement by the Medicaid program for organ transplants); final adoption of rules concerning (physician services reimbursed by the Medicaid program; surety bond requirements for Medicaid providers; competitive procurement of durable medical equipment (DME) and supplies in the Medicaid program; and a Medicaid rule concerning the coordination of Title XIX with Parts A and B of Title XVIII for payment of deductible/coinsurance); and a Managed Care 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: July 8, 1998, 4:09 p.m.

TRD-9810826



Thursday, July 16, 1998, 3:30 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Regulatory Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the June 18, 1998, meeting; proposed rules concerning (voluntary registration of dispensing opticians; requirements for designation of trauma stabilization (Level V facilities; fees for voluntary registration of providers of certain health-related services; licensure of device distributors and manufactures; and a memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding radiation control functions under the Texas Radiation Control Act); final adoption of rules concerning (accreditation and certification of mammography systems under the Texas Radiation Control Act; licensing of hospitals; and the licensing of abortion facilities and reporting requirements); rules discussion (proposed rule concerning paramedic licensure; proposed rule concerning registration and radiationsafety requirements for lasers under the Texas Radiation Control Act; and proposed rules concerning licensure of professional medical physicists).

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: July 8, 1998, 4:27 p.m.

TRD-9810828



Friday, July 17, 1998, 8:30 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Board Briefing Meeting

AGENDA:

The committee will meet to discuss and possibly act on: a briefing by the Commissioner on current activities of the Texas Department of Health; and a discussion concerning procedural and/or administrative issues of the Board of Health.

To request 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: July 8, 1998, 4:27 p.m.

TRD-9810829



Friday, July 17, 1998, 9:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health and Clinical Services Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the June 18, 1998, meeting; proposed rules concerning (reporting requirements for sexually transmitted diseases including acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection; establishment of a voluntary perinatal health care system; and the creation of an immunization registry and reporting requirements); final adoption of rules concerning (repeal and new rules concerning cancer incidence reporting; reporting and control of traumatic brain injuries; and the training of animal shelter personnel); and a report on the Texas Beast-feeding Initiative.

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: July 8, 1998, 4:28 p.m.

TRD-9810830



Friday, July 17, 1998, 11:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The board will introduce guests and will meet in open session to discuss and possibly act on: approval of the minutes of the June 19, 1998, meeting; commissioner's report; resolution declaring August breast-feeding awareness month; moment of the truth award; Strategic Management Committee (approval (general revenue transfers for FY 1998; and FY 1999 operating budget and FY 2000-20001 legislative appropriations request); final adoption of rules concerning (instructions and requirements for filing amendment to medical certification to certificate of death; supplemental birth certificates and access to paternity files; and repeal and new rules concerning procedures for handling request for providing public information)); Health Financing Committee (proposed Medicaid program rules concerning (reimbursed Tuberculosis clinic services; reimbursement for organ transplants; reimbursed physician services; surety bond requirements for providers; competitive procurement of durable medical requirement and supplies; and coordination of Title XIX with parts A&B of Title XVIII for payment of deductible/coinsurance)); Health and Clinical Services Committee (proposed rules concerning (reporting requirements for sexually transmitted including acquired immunode-

fiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection; establishment of a voluntary perinatal health care system; and creation of an immunization registry and reporting requirements); final adoption of rules concerning (repeal and new rules concerning cancer incidence reporting; reporting and control of traumatic brain injuries; and training of animal shelter personnel)); Human Resource Committee (appointments to be Medical Radiologic Technologists Advisory Committee); Regulatory Committee (proposed rules concerning (voluntary registration or dispensing opticians; requirements for designation of trauma stabilization (Level V) facilities; fees for voluntary registration of providers of certain health-related services; licensure of device distributors and manufactures; and a memorandum of understanding between the Texas Department of Health and Texas Natural Resource Conservation Commission regrading radiation control functions under the Texas Radiation Control Act (TRCA)); final adoption of rules concerning (accreditation and certification of mammography systems under the TRCA; licensing of hospitals; and the licensing of abortion facilities and reporting requirements)); public comments; announcements/comments; and setting a board meeting date for September 1998. The board will then meet in executive session to discuss personnel appointments (Deputy Commissioner for Prevention and Community Health; and Deputy Commissioner for Public Health Sciences and Quality). The board will return to open session to take action for approval of personnel appointments (Deputy Commissioner for Prevention and Community Health; and Deputy Commissioner for Public Health Sciences and Quality).

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: July 8, 1998, 4:28 p.m.

TRD-9810831



Texas Historical Commission

Wednesday, July 22, 1998, 8:00 a.m.

Strand Visitor's Center Board Room, 2016

Galveston

Texas Antiquities Advisory Board

AGENDA:

Approval of minutes from April 2, 1998, Antiquities Advisory Board (AAB) Meeting #10. A vote and discussion on proposed Chapter 25, rule changes and proposed new Chapter 24 rules. Nomination of seven State Archeological Landmarks: Eastham Site #1, 41H0183, Eastham, Site #2, 41H0184, and Eastham Site #3, 41H0185, in Houston County (all owned by TDCJ), The Hatfield Shelter, 41KR493 in Kerr County (owned by TPWD). Fort Saint Louis, 41VTA in Victoria County (owned by Victoria National Bank). The 3rd Espiritu Santo Mission, 41VT11, and the Schumacher Wholesale Grocery Company Building, 41VT134 in Victoria County (both owned by John & Judy Clegg). A vote on the Permanent Curatorial Facility Profile for long-term housing of the Bell Collection.

There will be general board discussion on several issues: a) Discussion of Architectural Issues under the Antiquities Code, b) Recommendations regarding State Archeological Landmark District: c) Discussion and draft of brochure of professional consultants; d) Awards of Merit; e) Status of the inventory of site collections curated under

Texas Antiquities Permits; f) Other held-in-trust collections issues (held-in-trust document between THC and facility, physical inventories, loans, verification of held-in-trust collections at a facility and guidelines for Loans and Exhibits (Display of the Belle Collection); g) Status of Accreditation and Review Council accreditation documents and program; h) Suggestions on making the Antiquities Advisory board even more effective; and i) Integrating Office of the State Archeologist (OSA) concerns into AAB proceedings. We will then hear any public comments and staff reports. Then adjournment of meeting.

Contact: Lillie Thompson, P.O. Box 12276, Austin, Texas 78711, 512/463-1858.

Filed: July 13, 1998, 11:10 a.m.

TRD-9811011



Thursday, July 23, 1998, 1:30 p.m.

Tremont House Hotel, 2300 Ship's Mechanic Row, Sam Houston II Room

Galveston

Community Heritage Development

AGENDA:

1. call to order
2. approval of minutes of April 23, 1998, meeting
3. report on the Certified Government Program
4. report on the Texas Main Street Program
5. report on the Heritage Tourism Program
6. other business
7. adjourn

Contact: Terry Colley, P.O. Box 12276, Austin, Texas 78711, 512/463-6092.

Filed: July 13, 1998, 2:29 p.m.

TRD-9811051



Thursday, July 23, 1998, 1:30 p.m.

Tremont House Hotel, Room: Samuel May Williams (B&C), 2300 Ship's Mechanic Row

Galveston

History Committee

AGENDA:

1. call to order
2. introduction of members and guests
3. overview of committee responsibilities and History Program Division activities
4. update on historic sites evaluation
5. review of legislative appropriations request for History Program Division
6. assignment of sub-committees
7. announcements
8. adjourn

Contact: Frances Rickard or Jim Steely, P.O. Box 12276, Austin, Texas 78711, 512/463-5853 or 512/463-5868.

Filed: July 13, 1998, 2:28 p.m.

TRD-9811050



Thursday, July 23, 1998, 3:00 p.m.

Tremont House Hotel, Sam Houston II Room, 2300 Ship's Mechanic Row

Galveston

Marketing Communications Committee

AGENDA:

- I. Approval of Minutes
- II. Welcome New Members- Purpose of Committee
- III. Review Information Packets
- IV. Publication Advisory Committee Recommendations
- V. Historic Sites Marketing Assessment
- VI. Medallion Reader survey and Newsletter Research
- VII. FY 1999 Goals Budget
- VIII. T.R. Fehrenbach Book Award Funding Update

Contact: Renee Peterson, P.O. Box 12276, Austin, Texas 78711, 512/463-6096.

Filed: July 13, 1998, 2:29 p.m.

TRD-9811052



Thursday, July 23, 1998, 3:00 p.m.

Tremont House Hotel, 2300 Ship's Mechanic Row, Samuel May Williams Room #A

Galveston

Archeology Committee

AGENDA:

1. update on the consolidation of Office of State Archeologist and Division of Antiquities Protection in the Archeology
2. update on current projects
3. discussion about the content and direction of future Archeology Committee meetings
4. other business
5. adjournment

Contact: James E. Bruseth, Ph.D., P.O. Box 12276, Austin, Texas 78711, 512/463-6096.

Filed: July 13, 1998, 2:29 p.m.

TRD-9811053



Thursday, July 23, 1998, 3:30 p.m.

Tremont House Hotel, 2300 Ship's Mechanic Row, Samuel May Williams Room, B&C

Galveston

Annual Meeting of the Guardians of the Texas Preservation Trust Fund

AGENDA:

1. Administration of the Texas Prevention Trust Fund
2. Long term plans for the Texas Preservation Trust Fund
3. Status Report on Grant Projects:
 - Fiscal Year 1997 Grant Program
 - Fiscal Year 1998 Grant Program
4. Strategy for the upcoming Legislative Session
5. other business

Contact: Stan Graves and Lisa Harvell, P.O. Box 12276, Austin, Texas 78711, 512/463-6094.

Filed: July 13, 1998, 2:29 p.m.

TRD-9811054



Friday, July 24, 1998, 8:00 a.m.

Tremont House Hotel, 2300 Ship's Mechanic Row, Col. Moody Boardroom

Galveston

Executive Committee

AGENDA:

- I. call to order
- II. announcements
- III. legislative issues and appropriations request
- IV. courthouse initiative
- V. marketing strategy session
- VI. historical sites update
- VII. military sites update
- VIII. shipwreck issues
- IX. adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, 512/463-6100.

Filed: July 13, 1998, 2:29 p.m.

TRD-9811055



Friday, July 24, 1998, 9:30 a.m.

Tremont House Hotel, 2300 Ship's Mechanic Row, Sam Houston II

Galveston

Quarterly Board Meeting

AGENDA:

- I. call to order
- II. minutes #188 from April 24, 1998
- III. announcements
- IV. public comments
- V. action items

VI. information items

VII. chairman's report

VIII. committee reports

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, 512/463-6100.

Filed: July 13, 1998, 2:30 p.m.

TRD-9811056



Saturday, July 25, 1998, 9:00 a.m.

Moody Mansion, 2618 Broadway

Galveston

Quarterly Board Meeting, State Board of Review

AGENDA:

- I. call to order
- II. announcements
- III. approval of minutes of the February 14, 1998, meeting
- IV. review of nominations for the National Register of Historic Places
- V. new business
- VI. adjournment

Contact: Judy George, P.O. Box 12276, Austin, Texas 78711, 512/463-8452.

Filed: July 10, 1998, 1:10 p.m.

TRD-9810940



Texas HMO Solvency Surveillance Committee

Friday July 24, 1998, 9:00 a.m.

333 Guadalupe Street, Room 1264, Tower I

Austin

AGENDA:

1. call to order
2. election of officers
3. approval of May 15, 1998 minutes
4. staff report
5. review of overall HMO Industry
6. executive session consultation with attorney regarding contemplated litigation, (Texas Government) Section 551.071
7. reconvene in Open Session (to discuss any further business)
8. adjourn

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: July 9, 1998, 11:28, a.m.

TRD-9810862



Texas State Affordable Housing Corporation

Thursday, July 23, 1998, 2:00 p.m.

507 Sabine Street, Room 437

Austin

Board

AGENDA:

The Board will meet to consider and possibly act upon the following:

Approve minutes of June 12, 1998 meeting

Receive public comment

Approve three uses for proceeds made available by loan on presidents corner

Approve transferring thirteen lots to El Cenizo Infrastructure Corporation

Approve HOME Grant Home Improvement Loan Program

Approve MRUS Loan for Second Lien Financing for Wharton, Bellville, Sealy

Approve Office Space for the Corporation

Executive Session: Personnel Matters; Litigation

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701 512/475-3934.

Filed: July 15, 1998, 9:00 a.m.

TRD-9811113



Texas Department of Housing and Community Affairs

Wednesday, July 22, 1998, 10:00 a.m.

State Capitol Extension, 1100 North Congress, Room E2.012

Austin

Affordable Housing Task Force

AGENDA:

The Affordable Housing Task Force will meet to consider and possibly act upon the following:

Approve minutes of June 24, 1998 meeting

Receive public comment

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701 512/475-3934.

Filed: July 14, 1998, 4:19 p.m.

TRD-9811105



Texas Department of Human Services

Friday, July 17, 1998, 10:00 a.m.

701 West 51st, East Tower, Public Hearing Room

Austin

Board

AGENDA:

1. approval of the minutes of June 18, 1998. 2. new policy on individual development accounts (IDAs) in the Food Stamp and Temporary Assistance for Needy Family (TNAF) Programs. 3. new

contracting requirements for community care providers. 4. revised client eligibility rules for the Community-Based Alternative (CBA) and Community Living Assistance and Support Services (CLASS) Programs 5. Adoption of Rules for Cost-Effective Purchases of Adaptive Aids and Minor Home Modifications in the Community-Based Alternatives (CBA) and Community Living Assistance and Support Services (CLASS) Programs. 6. Fiscal Monitoring and Recoupment Rules for the Community-Based Alternative (CBA) and Community Living Assistance and Support Service (CLASS) Programs. 7. Adoption of Revised Informal Administrative Review Rules of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICFMR/RC). 8. Revisions to the Personal Care Licensure Rules Regarding Staffing and Training. 9. Amendments to Policies and Procedures. 10. Advisory Committee Appointments. 11. Approval of the Fiscal Year 1999 Operating Budget and Fiscal Years 2000-2001 Legislative Appropriations Request (LAR). 12. Presentation on Data Broker Initiative. 13. Alzheimer's Pilot Program. 14. Commissioner's Report: a. Announcements and Comments. b. Tracking of board Action Items.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, 512/438-3048.

Filed: July 9, 1998, 11:28 a.m.

TRD-9810865



Texas Department of Insurance

Thursday, July 16, 1998, 9:30 a.m.

333 Guadalupe, Room 102

Austin

Advisory Committee for the Interim Study for Agents and Agents' Licensing Statutes

REVISED AGENDA:

Comments to the Advisory Committee from the Commissioner of Insurance. Public comment regarding the reports from the Life and Health and Property and Casualty Working Groups concerning the Working Groups' discussion and recommendations on the streamlining and consolidation of license types. Property and Casualty comments to be received from 9:30 to 11:30 a.m. Life and Health comments to be received from 1:30 to 3:30 p.m. Discussion and possible action regarding the Advisory Committee's recommendations to streamline and consolidate license types. Work on the proposed draft of the Advisory Committee's recommendations to the Commissioner. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Matt Ray, 333 Guadalupe Street, Austin, Texas 78701, 512/305-8197.

Filed: July 8, 1998, 4:26 p.m.

TRD-9810827



Friday, July 31, 1998, 10:30 a.m.

Hobby Hilton Hotel, 8181 Airport Boulevard

Austin

Building Code Advisory Committee

AGENDA:

I. call the meeting to order-Paul Cunningham, Chairman

II. welcome and outline of the purpose of the meeting-Lyndon Anderson, Associate Commissioner, Department of Insurance

III. presentation of items for consideration-Sam Nelson

Proposed changes to the Building Code for Windstorm Resistant Construction-Chief Engineer, Department of Insurance

IV. public comments

V. recommendations and guidance of the Committee-Paul Cunningham, Chairman

VI. general administrative matters, if any

VII. adjournment

Contact: Sam Nelson, 333 Guadalupe Street, Austin, Texas 78701, 512/322-2212.

Filed: July 15, 1998, 10:38 a.m.

TRD-9811134



Thursday, August 6, 1998, 9:00 a.m.

Holocaust Museum, 5401 Caroline Street

Houston

AGENDA:

Notice is hereby given that the Commissioner of Insurance of his delegatee will hold a public hearing in Docket Number 2373 to gather information on Holocaust survivors' insurance claim recoveries. This is an information gathering hearing which is being held for the purpose of soliciting input on Holocaust survivors' insurance claims and any impediments to claim recovery. All interested parties are invited to attend and participate.

The hearing will be held on August 6, 1998, at 10:00 a.m. at the Holocaust Museum, 5401 Caroline Street, Houston, Texas, 713/942-8000. Further information may be obtained from Angie Arizpe at 512/463-6326.

This hearing is held pursuant to the Insurance Code, Article 1.04 C, which requires the Commissioner to provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Texas Department of Insurance is also a signatory to a Memorandum of Understanding between Swiss, German and Italian regulators and other state regulators to bring resolution to these claims.

Contact: Sylvia Gutierrez, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6327.

Filed: July 8, 1998, 1:04 p.m.

TRD-9810800



Commission on Jail Standards

Thursday, June 30, 1998, 8:30 a.m.

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA:

Education Committee. Review staffs training efforts.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, 512/463-5505.

Filed: July 14, 1998, 12:23 p.m.

TRD-9811083



Thursday, June 30, 1998, 9:00 a.m.

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA:

Meeting called to order. Roll Call of Commission Members. Reading and approval of minutes for meeting conducted on May 20, 1998. Old Business: Galveston County, Harris County, San Jacinto County, Review of Enforcement Process/Status of Non-complaint Jails, Change to Standards-Adopt Health Services, Change to Standards-Adopt Health Services, Change to Standards-Adopt New Construction Rules, Suicide Research Project, Education Committee Report, New Business: Rockwall County, Gregg County, Lubbock County, Midland County Reeves County, Change to Standards-Proposed Fees and Payments, Change to Standards-Proposed New and Existing Construction Rules, Fee Schedule For Housing Non-Texas Inmates, Compliance with ADA Requirements, Board of Private Investigators and Private Security Agencies/TCLEOSE Issues, Nursing Home for Offenders, Meeting with Facilities-Holding for TDCJ, Internal Audit, Request for Variances; Randall County, Collin County. Review of Variances: Grimes County. Staff Report: Completed Jail Projects, Jails in Compliance, Status and Composition of Jail Population, Training, Financial Report/Budget/LAR, Strategic Plan. Other Business. Adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, 512/463-5505.

Filed: July 14, 1998, 12:22 p.m.

TRD-9811082



Board of Law Examiners

Thursday, July 23, 1998, 1:00 p.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Executive Committee

AGENDA:

The executive committee will consider the following: requests for waivers, rule interpretations, appeals, an nonstandard testing accommodations filed by the following adulterants or applicants: Sisal Adhikari, Timothy Anderson, Glenna Cordray, John Garcia, Sally Gary, Sangeeta Ghosh, Kelly Heitkamp, Richard Hornbeck, Lara Jitlal, Tira Jones, Bipin Manuel, Vicki McFadden, Sofia Perches, Darla Regnery, Patricia Ryan, Adam Bell and Karen Swan.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, 512/463-1621.

Filed: July 13, 1998, 3:35 p.m.

TRD-9811061



Boards for Lease of State-Owned Lands

Tuesday, July 21, 1998, 2:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831
Austin

Board for Lease of Texas Department of Criminal Justice

AGENDA:

Approval of previous board meeting minutes; consideration of tracts, terms and conditions for the October 6, 1998 oil, gas and other minerals lease sale.

Contact: Linda K. Fisher, 1700 North Congress, Austin, Texas 78701, 512/463-5016.

Filed: July 13, 1998, 3:49 p.m.

TRD-9811064

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Midwifery Board

Monday, July 20, 1998, 9:30 a.m.

Tower Building, Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The board will introduce the new midwifery program director and will discuss and possibly act on: approval of the minutes of the March 14, 1998, meeting; acceptance of the registrations of Dr. Frederick Harlass and Michelle Woodruff, Grievance Committee report (acceptance/rejection of recommendations on complaints 95-02; 97-06; and 97-07); correspondence from Board of Health member, Ruth Stewart, and the president of North Texas Midwives; transferring care discussion; Spanish translation of midwifery standards of practice and the Midwifery Act; oxygen rules (25 TAC Chapter 37); and approval of education, documentation, and complaint review rules (25 TAC Chapter 37).

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: Belva Alexander, 1100 West 49th Street, Austin, Texas 78756, 512/458-7111, Ext. 2067.

Filed: July 9, 1998, 9:10 a.m.

TRD-9810845

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Texas Natural Resource Conservation Commission

Thursday, July 16, 1998, 9:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, 11th Floor, Suite, 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on a petition to the Texas Natural Resource Conservation Commission by High Point Water Supply Corporation (WSC) for a cease and desist order against the city of Forney. High Point WSC is alleging that the City of Forney is serving with the service area of High Point WSC. SOAH Docket No. 582-98-1217.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: July 14, 1998, 3:04 p.m.

TRD-9811092

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Tuesday, July 21, 1998, 9:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, 11th Floor, Suite, 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application to the Texas Natural Resource Conservation Commission by Mountain Water Supply Corporation to amend its certificate of convenience and necessity (CNN) No. 10151 which authorizes the provision of water utility service in Cooke and Denton Counties, Texas. SOAH Docket No. 582-98-1218.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: July 14, 1998, 3:03 p.m.

TRD-9811091

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Thursday, July 23, 1998, 9:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, 11th Floor, Suite, 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application to the Texas Natural Resource Conservation Commission by A.N.N.S. Water System to amend its certificate of convenience and necessity (CNN) No. 11346 which authorizes the provision of water utility service in Walker County, Texas. SOAH Docket No. 582-98-1306.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: July 13, 1998, 3:11 p.m.

TRD-9811057

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Wednesday, August 26, 1998, 10:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, 11th Floor, Suite, 1100

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1283; TNRCC Docket No. 97-0847-AIR-E; Steve Carter Doing Business as Carter Paint and Body; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed April 3, 1998, concerning assessing administrative penalties against and requiring certain actions of Steve Carter doing business as Carter Paint and Body for violations of Texas Health and Safety Code Sections 382.085(b) and 382.0518(a) and 30 TAC Section 116.110(a) in Travis County, Texas.

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: July 10, 1998, 1:51 p.m.

TRD-9810943

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Texas Board of Private Investigators and Private Security Agencies

Wednesday, July 22, 1998, 9:00 a.m.

Texas Department of Public Safety, Criminal Law Building, 6100 Guadalupe Building 3 CLE Auditorium

Austin

Board

AGENDA:

- I. Approval of Minutes of October 10, 1997 Board Meeting.
- II. Approval of Minutes of December 4, 1997 Board Meeting.
- III. Approval of Minutes of March 13, 1998, Board Meeting.
- IV. Report from Administration Division Chief.
- V. Report from the Investigation Division Chief.
- VI. Report from the Administrative Law Judge.
- VII. Report from the License Division Chief.
- VIII. Report from Executive Director.
- IX. Discussion and Possible Board Action Regarding Proposal to Real All Current Board Rules.
- X. Discussion and Possible Board Action Regarding Proposal of New Board Rules.
- XI. Discussion and Possible Board Action Regarding Proposed Reciprocity Agreements with Oklahoma, Arkansas, Louisiana and New Mexico.
- XII. Discussion and Possible Board Action and Presentation by Austin Policy Department Regarding Security Uniforms Resembling Policy Uniforms in Cities with a Population of 5000,000 or More.
- XIII. Executive Session to Consider the Evaluation of the Executive Director Pursuant to Section 551.074, Texas Government Code.
- XIV. Return to Open Session for Further Discussion and Possible Board Action Involving the Evaluation of the Executive Director Pursuant to Section 551.074, Texas Government Code.
- XV. Executive Session to Consult with Attorney Concerning Pending or Contemplated Litigation, Pursuant to Section 551.071, Texas Government Code.
- XVI. Return to Open Session for Discussion and Possible Board Action After Consultation with Attorney Concerning Pending or Contemplated Litigation, Pursuant to Section 551.071, Texas Government Code.
- XVII. Discussion and Possible Board Action Regarding Executive Director's Denial of National Security Academy's Request for Approval to Train Level Three Instructors.

Contact: Jay Kimbrough, 6100 Guadalupe, Austin, Texas 78701, 512/463-5545.

Filed: July 9, 1998, 8:26 a.m.

TRD-9810841

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Public Utility Commission of Texas

Friday, July 17, 1998, 9:30 a.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 on 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 reliability area, including the cost and benefit to effect the interconnection, an estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be located.

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7265.

Filed: July 9, 1998, 1:09 p.m.

TRD-9810875

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Wednesday, July 22, 1998, 9:30 a.m.

William B. Travis Building, 1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Nos. 17751, 16705, 17285, 19270, 17942, 18607, 18078, Project Nos. 19529, 18703, 19087., Docket Nos. 19175, 16442, 16702, 18389, Electric industry restructuring, electric utility reliability, and customer service, Project Nos. 18000, 16251, Docket No. 19000, Project No. 18811, Docket Nos. 16722, 19169, 19224, 19302, 19373, 19429, 18548, 18985, 19225, 19251, 19252, 19268, 19274, 19275, 19285, 19301, 19337, Project Nos. 18702, 18515, 18516, 18008, 18438, 16899, 16900, 16901, The Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission; Activities in local telephone market, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA Project Nos. 18121, 17308, Administrative, Electric, and Telecommunications Rulemaking, and Project Agenda by Fiscal Year; Utility customer service procedures a/k/a Don't Tread on Me; Customer service issues, including but not limited to correspondence and complaint issues; Operating Budget, Agency Business Plan, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Linda Rydeen, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7009.

Filed: July 14, 1998, 5:09 p.m.

TRD-9811099

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Wednesday, July 22, 1998, 9:30 a.m.

William B. Travis Building, 1701 North Congress Avenue

Austin

REVISED AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Nos. 17751, 16705, 17285, 19270, 17942, 18607, 18078, Project Nos. 19529, 18703, 19087,, Docket Nos. 19175, 16442, 16702, 18389, Electric industry restructuring, electric utility reliability, and customer service, Project Nos. 18000, 16251, Docket No. 19000, Project No. 18811, Docket Nos. 16722, 19169, 19224, 19302, 19373, 19429, 18548, 18985, 19225, 19251, 19252, 19268, 19274, 19275, 19285, 19301, 19337, Project Nos. 18702, 18515, 18516, 18008, 18438, 16899, 16900, 16901, The Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission; Activities in local telephone market, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA Project Nos. 18121, 17308, Administrative, Electric, and Telecommunications Rulemaking, and Project Agenda by Fiscal Year; Utility customer service procedures a/k/a Don't Tread of Me; Customer service issues, including but not limited to correspondence and complaint issues; Operating Budget, Agency Business Plan, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Linda Rydeen, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7009.

Filed: July 14, 1998, 4:50 p.m.

TRD-9811111



Monday, August 17, 1998, 9:00 a.m.

6303 Forest Park/5501 LBJ Freeway, Room 720

Dallas

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket No. 16251, Investigation into Southwestern Bell Telephone Company's Entry into In-Region InterLata Service Under Section 271 of the Telecommunications Act of 1996; and Docket No. 19000, Relating to the Implementation of Southwestern Bell Telephone Company Interconnection Agreements with AT&T and MCI.

Contact: Linda Rydeen, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7009.

Filed: July 14, 1998, 4:21 p.m.

TRD-9811095



Railroad Commission of Texas

Tuesday, July 14, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room 1-111

Austin

EMERGENCY REVISED AGENDA:

The Commission will consider and may act on the following items: A briefing regarding U.S. Navy rail shipments of Napalm across Texas.

Reason for emergency: The potentially hazardous nature of the Napalm shipments creates an urgent public necessity for Railroad Commission consideration and action.

Contact: Jerry Martin, P.O. Drawer 12967, Austin, Texas 78711-2967, 512/463-7001.

Filed: July 13, 1998, 5:00 p.m.

TRD-9811074



Tuesday, July 21, 1998, 9:00 a.m.

1701 North Congress, 12th Floor Conference Room 12-170

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Kathy Way, P.O. Drawer 12967, Austin, Texas 78711-2967, 512/463-6729.

Filed: July 10, 1998, 4:01 p.m.

TRD-9810964



Center for Rural Health Initiatives

Friday, July 17, 1998, 9:00 a.m.

Center for Rural Health Initiatives, Southwest Tower Building, 211 East 7th Street, 7th Floor Conference Room

Austin

Executive Committee

AGENDA:

I. Call to Order

II. Welcome and Introductions

III. Discussion Sunset Committee Report

IV. Executive Session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the executive director(s).

V. Action in open session on the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the current executive director.

VI. Action in open session on the appointment, employment, evaluation, reassignment, or duties of an interim executive director.

VII. Consideration of Texas Rural Health Association Grant Proposal

VIII. Staff presentation concerning Immediate Care needs.

IX. Consideration of a Board Skill Building and Team Building Seminar

X. Adjourn.

Contact: Carol Peters, 211 East 7th Street, Austin, Texas 512/479-8891.

Filed: July 9, 1998, 3:44 p.m.

TRD-9810898



School Land Board

Friday, July 17, 1998, 8:15 a.m.

El Paso International Airport, 6701 Convair Drive, Southwest Airlines Arrival Gates

Austin

Board

AGENDA:

Approval of previous board meeting minutes; Closed Session and Open Session-The School Land Board will meet at the El Paso International Airport to travel to inspect permanent school fund lands in El Paso Count, Texas.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, 512/463-5016.

Filed: July 8, 1998, 5:37 p.m.

TRD-9810839



Tuesday, July 21, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Board

AGENDA:

Approval of previous board meeting minutes; pooling applications: Brookeland (Austin chalk, 8800), Jasper Co.; Gomez Field, Pecos Co; Giddings (Austin Chalk-3), Fayette County; Stratton Ridge, Brazoria Co; applications to lease highway rights of way for oil and gas, St. Hwy. 164, Limestone Co.; Sunset Drive, Shadow Lane and Carefree Drive, Victoria Co.; FM Road 622, Victoria Co.; St. Hwy 77, Lee Co; Consideration and approval of tracts, terms and conditions for the October 6, 1998 oil, gas and other minerals lease sale; direct land sales, Bexar County; direct land sales, File 111068, Pecos Co. File 128273, Reeves Co. ; Coastal public lands-commercial leasing applications and renewals, Neches River, Jefferson Co.; Taylor Lake, Harris Co.; easement applications, renewals, amendments, terminations and requests, Carancahua Bay, Calhoun Co.; Laguna Madre, Cameron Co.; Cayo Del Grullo, Kleberg Co.; Copano Bay, Aransas Co.; structure (cabin) permit renewals, Laguna Madre, Kenedy Co.; and Laguna Madre, Kleberg Co.; Closed Session-preliminary consideration of acquisition of a tract of land, Laguna Madre, Cameron County; Closed Session and Open Session-consideration of action regarding the possible conveyance and acquisition of land in the around Eckert's Bayou, Galveston, Co; Closed Session and Open Session-consideration of Paseo Del Este contract, El Paso County; Closed Session and Open Session-status report on State of Texas et al v. Amoco Production Company, et al, Cause #95-08680, 345th Judicial District Court, Travis Co., Texas; Closed and Open Sessions-pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, 512/463-5016.

Filed: July 13, 1998, 3:49 p.m.

TRD-9811063



State Securities Board

Wednesday, July 22, 1998, 9:30 a.m.

Rusk State Office Building, 200 East 10th Street, Room 227

Austin

Board

AGENDA:

(1) March 3, 1998 meeting minutes. (2) rules; (A) published proposals relating to: (1) amending §105.1; (2) amending §107.2; (3) amending §115.1; (4) amending §115.2; (5) amending §115.3; (6) amending §115.4; (7) creating new §115.8. ex parte revocation of dealer/agent registration; (8) amending §105.4; (9) amending §139.13; (B) new proposals relating to: (1) amending §§105.2, 105.5-105.8, 105.12-105.14 and 105.16-105.19; (2) repealing §§105.3 and 105.9-105.11; (3) creating new §105.9, concerning filings in contested cases; (4) amending §§113.1, 113.3-113.6, 113.8, 113.9 and 113.11-113.13; (5) creating new §§113.14-113.25, concerning the following securities registration matters: corporate securities definitions; impoundment of proceeds; loans and other materials affiliated transactions; options and warrants; preferred stock; promoter's equity investment; promotional shares; specificity in use of proceeds; underwriting expenses, underwriter's warrants, selling expenses, and selling security holds; unsound financial condition; unequal voting rights; and debt securities; (6) amending §115.1; (7) amending §115.3; (8) amending §139.19. (3) review of 1998 management control audit by the State Auditor's Office. (4) report from staff on coordinated equity review. (5) report from staff on verification of investment adviser registration status. (6) adoption of agency rule review plan. (7) new business for future board meetings. (8) general update on agency operations from Securities Commissioner and senior staff. (9) executive session to conduct annual performance review of the Securities Commissioner. (10) possible action on matters discussed in executive session.

Contact: Denise Voigt Crawford, 200 East 10th Street, Fifth Floor, Austin, Texas 78701, 512/305-8300.

Filed: July 13, 1998, 1:27 p.m.

TRD-9811044



Monday, October 19, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

Administrative Hearing

AGENDA:

A hearing will be held in SOAH Docket No. 312-98-1171 for the purpose of determining whether the dealer registration of La Jolla Capital Corporation should be revoked.

Contact: David Grauer, 200 East 10th Street, 5th Floor, Austin, Texas 78701, 512/305-8392.

Filed: July 13, 1998, 3:30 p.m.

TRD-9811059



State Seed and Plant Board

Tuesday, July 21, 1998, 1:00 p.m.

Plains Cotton Growers, Inc., 4510 Englewood Avenue

Lubbock

AGENDA:

Discussion and Action on: minutes of the April 29, meeting; applicants for license as certified seed growers; foreign designations: nomenclature requests: variety name changes; length of stand requirements for Verde Kleingrass; requests for certification eligibility; and public comment.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, 409/542-3691.

Filed: July 10, 1998, 2:21 p.m.

TRD-9810947

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Council on Sex Offender Treatment

Wednesday, July 22, 1998, 5:00 p.m.

Ballroom A & B, Omni Southpark Hotel, 4140 Governor's Row

Austin

Clinical Issues Committee

AGENDA:

The committee will introduce members, guests and staff, and will discuss and possibly act on: adoption of the minutes of the last meeting, civil commitment; legislative agenda issues; collection of polygraph information; relapse prevention and treatment guidelines; other business not requiring action; agenda items for future committee meetings; and public comment.

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: Kelly Page or Tammy Tatum, 1100 West 49th Street, Austin, Texas 78756, 512/834-4530.

Filed: July 10, 1998, 10:57 a.m.

TRD-9810931

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Wednesday, July 22, 1998, 7:00 p.m.

Ballroom A&B, Omni Southpark Hotel, 4140 Governor's Row

Austin

AGENDA:

The council will introduce members, guests and staff, and will discuss and possibly act on: approval of the minutes of the June 19, 1998, meeting; division director's report; executive director's report; Clinical Issues Committee report (civil commitment; legislative agenda issues; collection of polygraph information; and relapse prevention and treatment guidelines); tracking of adult and juvenile sex offenders; future items for consideration; other matters not requiring council action; public comment; agenda items for future council meetings; and setting future meeting dates for the council.

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: Kelly Page or Tammy Tatum, 1100 West 49th Street, Austin, Texas 78756, 512/834-4530.

Filed: July 10, 1998, 10:57 a.m.

TRD-9810932

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Spindletop 2001 Commission

Tuesday, July 21, 1998, 10:00 a.m.

855 Florida, John Gray Center, Bldg. B, Lamar University

Beaumont

Executive Committee

AGENDA:

Physical Inspection of new office at Lamar University, John Gray Center. Update on progress made: personnel, equipment, seminars, public relations. Review Financials: monies received requested and to be sought; charge account. Receive suggestions for Board action on: criteria for logo use and response to requests; preparing official calendar of events; appointing committee chairmen. Discuss plans for: historical/educational forums; adopting "Mission Statement"; interviews with public officials and civic organizations; future approaches to achieve Centennial Success.

Contact: Evelyn M. Lord, (512) 866-7179

Filed: July 13, 1998, at 3:48 p.m.

TRD-9811062

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Structure Pest Control Board

Tuesday, July 28, 1998, 9:30 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.122

Austin

Regular Board

AGENDA:

I. Approval of Board minutes of April 30, 1998

II. Public Comment and Public Hearing on Sec 591.21, Definitions, 595.5, Contracts, and 599.7 Posting Notice of Inspection

III. Resolution in honor of Robert W. Jenkins, Sr.

IV. Consider for Adoption Section 591.21, Definitions, 595.5, Contracts, and 599.7, Posting Notice of Inspection

V. Possible Proposal of Amendments to Section 599.4, termite Treatment Disclosure Documents

VI. Consider Proposal for Decision on Docket No 472-98-0032, 472-98-0033, 472-98-0139, 472-97-0380, 472-98-0726, 472-98-0725, 472-98-0724

VII. Review Agreed Administrative Penalties and Consent Agreements

VII. Approval of Retreatment Policy

IX. Termite Bait Update

X. Application for Approval of Thermal Pest Eradication under Section 599.1

XI. Application for Approval of T-14 Termite Control under Section 599.1

XII. Approval of Legislative Appropriation Request 2000-2001

XIII. Board Member Notebook

XIV. Executive Director's Report

XV. Adjourn

Contact: Benny Mathis, 1106 Clayton Lane, Suite 100LW, Austin, Texas 78723, 512/451-7200.

Filed: July 13, 1998, 11:10 a.m.

TRD-9811010



Texas State Technical College System

Friday, July 17, 1998, 1:30 p.m.

System Administration Building, 3801 Campus Drive

Waco

Board of Regents Executive Committee-Telephone Conference

AGENDA:

The TSTC Board of Regents Executive Committee will meet by telephone conference to consider and take action on the following agenda items: Authorization to submit a grant application to the Economic Development Administration of the U.S. Department of Commerce for the Construction of Semiconductor Building at Texas State Technical College Harlingen and Submission of SCATE II Project to the Telecommunications Infrastructure Fund Board by Texas State Technical College Sweetwater.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: July 13, 1998, 12:32 p.m.

TRD-9811042



University of Houston

Monday, July 20, 1998, 1:00 p.m.

S&RII, Room 501, University of Houston, 4800 Calhoun Boulevard

Houston

Institutional Animal Care and Use Committee

AGENDA:

To discuss and act upon the following:

approval of June 16, 1998 minutes

new protocols

renewal protocols

other business

Contact: Charles Raflo, 4800 Calhoun Boulevard, Houston, Texas 77204-5510, 713/743-9191.

Filed: July 10, 1998, 9:01 a.m.

TRD-9810913



University Interscholastic League

Monday, July 13, 1998, 11:00 a.m.

Thomson Conference Center-UT Campus, 26th and Red River

Austin

Waiver Review Board

AGENDA:

AA. Request for a waiver of the Four Year Rule by Marlon Wilford representing McNeil High School in Austin.

BB. Request for a waiver of the Four Year Rule by James Washington representing Carroll High School in Corpus Christi, Texas.

Contact: Sam Harper, 23001 Lake Austin, Boulevard, Austin, Texas 78713, 512/471-5883.

Filed: July 9, 1998, 12:06 p.m.

TRD-9810877



University of Texas System

Wednesday, July 22, 1998, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

UT Health Science Center-San Antonio, Animal Care and Use Committee

AGENDA:

1. approval of minutes

2. protocols for review

3. subcommittee reports

other business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, 210/567-3717.

Filed: July 13, 1998, 11:11 p.m.

TRD-9811076



Texas Board of Veterinary Medical Examiners

Thursday, September 24, 1998, 9:00 a.m.

Room 302, Tower II, William P. Hobby Building, 333 Guadalupe

Austin

Examination Preparation Committee

AGENDA:

The Committee will meet to prepare the December, 1998 examination for licensure and review the results of the September Examination.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701, 512/305-7555.

Filed: July 9, 1998, 3:30 p.m.

TRD-9810894



Texas Water Development Board

Thursday, July 16, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

Board

AGENDA:

The Board will consider: minutes; committee, executive and final reports; time extension to close loan for City of Mercedes; requests from Lower Valley Water district to amend the Colonia Plumbing Loan Program application detailing additional eligible areas for loan applications and for Cultural Resources Management funding; affirmation of environmental finding and release of funds for City of Houston project; forwarding applications for Flood Mitigation Assistance to the Federal Emergency Management Agency; contract for water research study on financing methods for water and wastewater infrastructure and transfer of funds; contract amendment amount to continue monitoring the bad water line in the Edwards Aquifer and transfer of funds; contract with McAllen Public Utility Board to collect data from a new process pilot demonstration project that reclaims treatment sewage effluent for reuse and transfer of funds; contracts for water quality analysis with the Lower Colorado River Authority and transfer of funds; contracts for initial scope of work development for regional water planning and transfer of funds; grant applications for purchase of agricultural conservation equipment; agreement to purchase hypsography digital line graphs for the Texas Strategic Mapping Program; contract with Viability Group for training; transfer of depository interest from DFund I Economically Distressed Areas Program (EDAP) into DFund II EDAP and transfer of final balances in the DFund I Program Fund to the DFund I Interest and Sinking Fund; adoption of new Chapter 368 concerning the Flood Mitigation Assistance Program; publication of amendments to §363.502 and §363.505 concerning definitions and debt component in increases under EDAP; publication of amendments to Chapter 371, Drinking Water State Revolving Fund to include minority and women business enterprise requirements, specify application deadlines, and clarify information to be furnished to disadvantaged community applications; publication of repeal and new sections in Chapter 367 concerning the Agricultural Water Conservation Program; legislative appropriation request issues; and executive session re: executive administrator performance evaluation.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: July 8, 1998, 1:04 p.m.

TRD-9810803



Texas Water Resources Finance Authority

Thursday, July 16, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

AGENDA:

1. Consider approval of the minutes of the meeting of June 18, 1998.
2. Executive Session to consider matters related to the status of City of Smyer bond compliance and reconvene in open meeting to take any necessary action.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: July 8, 1998, 1:04 p.m.

TRD-9810802



Texas Workforce Commission

Thursday, July 16, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street,

Austin

AGENDA:

Approval of prior meeting notes: vote on minutes dated April 28, 1998, May 13, 1998, and May 27, 1998; public comment; general discussion and staff report concerning the Employment Service and related at the Texas Workforce Commission; Discussion, consideration and possible action: (1) on acceptance of donations of Child Care Matching Funds; (2) on the adoption of the Communities in Schools Rules (Chapter 827); (3) on the adoption of the Proprietary Schools Rules (40 TAC, Chapter 807); (4) on the adoption of the proposed amendment to the Allocation Rule concerning rule's scope and purpose (Section 800.51, Subsection (d)); (5) on the proposed Food Stamp, Employment and Training Rules (Chapter 813); (6) relating to House Bill 2777 and the development implementation of plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; (7) concerning the Food Stamp Employment and TRaining Program; (8) on the proposed Resolution concerning the creation of a Transportation Task Force, to develop recommendations which would assist in providing transportation to people needing transportation to and from work; (9) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Boards for Certification; (10) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce development Boards; and (11) 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; Executive Session pursuant to: Governor 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 AFL0CIO 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; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); Gene E. Merchant et al v. TWC; and Cynthia Harris v. TEC; 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 Rule 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, question, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases if any; (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 28 and 28A.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: July 8, 1998, 1:11 p.m.

TRD-9810807



Tuesday, July 21, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street,

Austin

AGENDA:

Approval of prior meeting notes: vote on minutes dated June 15, 1998; public comment; consideration and action on tax liability

cases listed on Texas Workforce Commission Docket 29; Discussion, consideration and possible action: (1) on acceptance of donations of Child Care Matching Funds; (2) on the adoption of the Communities in Schools Rules (Chapter 827); (3) on the adoption of the Proprietary Schools Rules (40 TAC, Chapter 807); (4) on the adoption of the proposed amendment to the Allocation Rule concerning rule's scope and purpose (Section 800.51, Subsection (d)); (5) on the proposed Food Stamp, Employment and Training Rules (Chapter 813); (6) on a proposed Resolution concerning the creation of a Transportation Task Force, to develop recommendations which would assist in providing transportation to people needing transportation to and from work; (7) on the revised 1998 Audit Plan; (8) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Boards for Certification; (9) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; and; (10) regarding approval of Local Workforce Board or Private Industry Council Nominees; General discussion and staff report concerning the Employment Service and related functions at the Texas Workforce Commission; Discussion, consideration and possible action 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: Staff report and discussion-update on activities relating to: Administration Division, Finance Division, Information Systems Division, Unemployment Insurance, 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 Roussett v. TWC et al; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); Gene E. Merchant et al v. TWC; and Cynthia Harris v. TEC; 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 Rule 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, question, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases if any; (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 29.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: July 13, 1998, 3:49 p.m.

TRD-9811065



Regional Meetings

Meeting filed July 8, 1998

Austin Transportation Study, Policy Advisory Committee met at Joe C. Thompson Conference Center, Room 2.102, 26th and Red River, Austin, July 13, 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-9810823.

Bexar-Medina-Atascosa WCID #1, Board of Directors met at 226 Highway 132, Natalia, July 13, 1998, at 8:30 a.m. Information may

be obtained from John Ward, III, 226 Highway 132, Natalia, Texas 78059, 830/665-2132. TRD-9810838.

Dallas Housing Authority, Dallas Housing Authority Board of Commissioners met at Brooks Manor Housing Development, 630 South Llewellyn, Dallas, July 16, 1998, at 4:00 p.m. Information may be obtained from Mattye Jones, 3939 North Hampton Road, Dallas, Texas 75212, 214/951-8302. TRD-9810805.

Evergreen Underground Water Conservation District, Board of Director met at 1306 Jourdanton, June 14, 1998, at 10:00 a.m. Information may be obtained from Evergreen UWCD, P.O. Box 155, Jourdanton, Texas 78026, 830/769-3740. TRD-9810834.

Golden Crescent Workforce Development Board, Welfare to Work Committee met at 1502 East Airline, Suite 39, Victoria, July 13, 1998, at 1:30 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9810801.

Harris County Appraisal District, Board of Director met at 2800 North Loop West, 8th Floor, Houston, July 15, 1998, at 9:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 920975, Houston, Texas 77292-0975, 713/957-5291. TRD-9810809.

Nolan County Central Appraisal District met at Nolan County Courthouse, Third Floor, 100 East Third, Sweetwater, July 14, 1998, at 7:00 a.m. Information may be obtained from Patricia David, P.O. Box 1256, Sweetwater, Texas 79556, 915/235-8424. TRD-9810822.

North Texas Municipal Water District, Board of Directors met at the Administration Office, 505 East Brown Street, Wylie, July 23, 1998, at 4:00 p.m. Information may be obtained from James M. Parks, P.O. Box 2048, Wylie, Texas 75098, 972/442-5405. TRD-9810799.

Rio Grande Council of Governments, Board of Directors' met in at 1100 North Stanton, 6th Floor, Conference Center, El Paso, July 17, 1998, at 11:30 a.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 915/533-0998. TRD-9810804.

Van Zandt County Appraisal District, Board of Directors met at Highway 64 West, Canton, July 20, 1998, at 5:30 p.m. Information may be obtained from Chris Becker, Highway 64 West, Canton, Texas 75103, 903/567-6171. TRD-9810818.

Meetings filed July 9, 1998

Bi-County Water Supply Corporation met at Arch David Road, FM 2254, Pittsburg, July 11, 1998, at 7:00 p.m. Information may be obtained from Janell, Larson, P.O. Box 848, Pittsburg, Texas 75686, 903/856-5840. TRD-9810860.

Brazos Valley Council of Governments, Overall Economic Development Committee met at 1905 Texas Avenue, Bryan, July 15, 1998, at 10:00 a.m. Information may be obtained from Jason Bienski, P.O. Drawer 4128, Bryan, Texas 77805, 409/775-4244 Ext. 120. TRD-9810861.

Brazos Valley Workforce Development Board, Executive Committee met at 1905 South Texas Venue, Bryan, July 16, 1998, at 2:30 p.m. Information may be obtained from Mollie Moore, 1903 Texas Avenue South, Bryan, Texas 77801, 409/821-0202 or fax 409/779-9297. TRD-9810863.

Burke Center, Board of Trustees met at 4101 South Medford Drive, Lufkin, July 21, 1998, at 1:00 p.m. Information may be obtained from Chauntel Moore, 4101 South Medford Drive, Lufkin, Texas 75901, 409/639-1141. TRD-9810849.

Burnet Central Appraisal District, Appraisal Review Board met at 223 South Pierce Street, Burnet, July 14, 1998, at 1:00 p.m. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet, Texas 78611, 512/756-8291. TRD-9810893.

Burnet Central Appraisal District, Board of Directors met at 223 South Pierce Street, Burnet, July 16, 1998, at 6:00 p.m. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet, Texas 78611, 512/756-8291. TRD-9810892.

Edwards Aquifer Authority, Board met at the New Braunfels Civic Center, 39 South Seguin Avenue, New Braunfels, July 14, 1998, at 4:00 p.m. Information may be obtained from Mary Esther, R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9810851.

El Oso Water Supply, Board of Directors met at Highway 99, Karnes City, July 14, 1998, at 7:30 p.m. Information may be obtained from El Oso Water Supply Corporation, P.O. Box 309, Karnes City, Texas 78118, 830/780-3539. TRD-9810848.

El Oso Water Supply, Board of Directors met in a revised agenda at Highway 99, Karnes City, July 14, 1998, at 7:30 p.m. Information may be obtained from El Oso Water Supply Corporation, P.O. Box 309, Karnes City, Texas 78118, 830/780-3539. TRD-9810903.

Heart of Texas Council of Governments, Workforce Development Board met at 300 Franklin Avenue, Waco, July 16, 1998, at 5:30 p.m. Information may be obtained from Donna Tomlinson, 300 Franklin Avenue, Waco, Texas 76701, 254/756-7822. TRD-9810904.

Heart of Texas Council of Governments, Executive Committee met at 300 Franklin Avenue, Waco, July 23, 1998, at 10:00 a.m. Information may be obtained from Donna Tomlinson, 300 Franklin Avenue, Waco, Texas 76701, 254/756-7822. TRD-9810905.

Kendall Appraisal District, Board of Directors met at 121 South Main Street, Boerne, July 15, 1998, at 6:00 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, 830/249-8012 or fax 830/249-3975. TRD-9810856.

Lee County Appraisal District, Appraisal Review Board met at 218 East Richmond Street, Giddings, July 15, 1998, at 9:00 a.m. Information may be obtained from Lynette Jatzlau, 218 East Richmond Street, Giddings, Texas 78942, 409/542-9618. TRD-9810874.

Mason County Appraisal District, Appraisal Review Board met at 210 Westmoreland, Mason, July 15, 1998, at 10:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, 915/347-5989. TRD-9810864.

Rockwall County Central Appraisal District, Appraisal Review Board met at 106 North San Jacinto, Rockwall, July 13, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771-2034. TRD-9810855.

Rockwall County Central Appraisal District, Appraisal Review Board met at 106 North San Jacinto, Rockwall, July 14, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771-2034. TRD-9810854.

Rusk County Appraisal District, Appraisal Review Board met at 107 North Van Buren Street, Henderson, July 20, 1998, at 9:00 a.m. Information may be obtained from Terry W. Decker, P.O. Box 7, Henderson, Texas 75653-0007, 903/657-3578. TRD-9810844.

San Jacinto River Authority, Region H Water Planning Group, 4502 Leeland, Room 107, Conroe, July 15, 1998, at 10:00 a.m.

Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, 409/588-1111. TRD-9810866.

South Plains Association of Governments, Executive Committee met at 1323 58th Street, Lubbock, July 14, 1998, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452, 806/762-8721. TRD-9810842.

South Plains Association of Governments, Board of Directors met at 1323 58th Street, Lubbock, July 14, 1998, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452, 806/762-8721. TRD-9810843.

South Plains Regional Workforce Development Board met at Boardroom, Lubbock Chamber of Commerce, 1120 14th Street, Lubbock, July 16, 1998, at 3:00 p.m. Information may be obtained from Denise Wanner, P.O. Box 10227, Lubbock, Texas 79408, 806/744-1987. TRD-9810899.

Taylor County Central Appraisal District, Appraisal Review Board met at 1534 South Treadaway, Abilene, July 14-15, and 17, 1998, at 1:30 p.m. Information may be obtained from Lupe Solis, P.O. Box 1800, Abilene, Texas 79604, 915/676-9381, Ext. 50 or fax 915/676-7877. TRD-9810853.

Taylor County Central Appraisal District, Appraisal Review Board met at 1534 South Treadaway, Abilene, July 23, 1998, at 1:30 p.m. Information may be obtained from Lupe Solis, P.O. Box 1800, Abilene, Texas 79604, 915/676-9381, Ext. 50 or fax 915/676-7877. TRD-9810852.

Wise County Appraisal District, Appraisal Review Board met at 206 South State, Decatur, July 14, 1998, at 8:30 a.m. Information may be obtained from Freddie Triplett, 206 South State, Decatur, Texas 76234, 940/627-3081. TRD-9810846.

Wise County Appraisal District, Board of Directors met at 206 South State, Decatur, July 14, 1998, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State, Decatur, Texas 76234, 940/627-3081. TRD-9810891.

Meeting filed July 10, 1998

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Bastrop, July 14, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9810922.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Bastrop, July 16, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9810919.

Bastrop Central Appraisal District, Board of Directors met at 1200 Cedar Street, Bastrop, July 16, 1998, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9810920.

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Highway 6, Meridian, July 17, 1998, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, 817/435-2304. TRD-9810942.

Burnet Central Appraisal District, Appraisal Review Board met at 223 South Pierce Street, Burnet, July 14, 1998, at 1:00 p.m. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet, Texas 78611, 512/756-8291. TRD-9810915.

Comal Appraisal District, Appraisal Review Board will meet 178 East Mill Street, #102, New Braunfels, July 27-29, 1998, at 9:00 a.m. Information may be obtained from Curtis Koehler, P.O. Box

311222, New Braunfels, Texas 78131-1222, 830/625-8597. TRD-9810965.

Deep East Texas Council of Governments, East Texas Regional Water Planning Group RWPA "I" met at 1149 Pearl, Jefferson Co. Courthouse, Commissioner's Court Room, Beaumont, July 15, 1998, at 4:00 p.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704 or fax 409/384-5390. TRD-9810949.

East Texas Council of Governments, CEO Board of Directors met at 3119 Estes Parkway, Longview, July 16, 1998, at 10:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9810953.

East Texas Council of Governments, Workforce Development Board met at 3119 Estes Parkway, Longview, July 16, 1998, at 10:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9810963.

Education Service Center Region I, Board of Directors met at 1900 West Schunior, Edinburg, July 14, 1998, at 5:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, 956/383-5611. TRD-9810929.

Education Service Center Region XVII, Board of Director will meet at 1111 West Lop 289, Lubbock, August 18, 1998, at 3:00 p.m. Information may be obtained from Kyle R. Wargo, 1111 West Loop 289, Lubbock, Texas 79416, 806/792-5468, Ext. 852. TRD-9810917.

Golden Crescent Workforce Development Board met at 2401 Houston Highway, Victoria, July 16, 1998, at 4:30 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9810968.

Gonzales County Appraisal District, Board of Directors met at 928 St. Paul Street, Gonzales, July 16, 1998, at 6:00 p.m. Information may be obtained from Lona Haile or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, 830/672-2879 or fax 830/672-8345. TRD-9810933.

Harris County Appraisal District, Board of Directors met at 2800 North Loop West, 8th Floor, Houston, July 15, 1998, at 9:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 920975, Houston, Texas 77292-0975, 713/957-5291. TRD-9810948.

Hill County Transit District, Board of Directors met at 620 East Main, County Commissioner's Courtroom, Gatesville, July 15, 1998, at 1:00 p.m. Information may be obtained from Carole Warlick, 620 East Main, Gatesville, Texas 915/372-5167. TRD-9810941.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, July 13, 1998, at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336-1090, 806/894-9654 or fax 806/894-9654. TRD-9810908.

Jim Wells County Soil and Water Conservation District met at 2287 North Texas Boulevard, Suite 5, Alice, July 15, 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, Ext. 202. TRD-9810911.

Jim Wells County Soil and Water Conservation District met in a revised agenda at 2287 North Texas Boulevard, Suite 5, Alice, July 15, 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, Ext. 202. TRD-9810912.

Lake Livingston Water Supply and Sewer Service Corporation, Board of Directors met at 622 South Washington, Livingston, July 16, 1998, at 10:00 a.m. Information may be obtained from M.D. Simmons, P.O. Box 1149, Livingston, Texas 77351, 409/327-3107 or fax 409/327-8959. TRD-9810934.

Lamar County Appraisal District, Board of Directors met at 521 Bonham Street, Paris, July 14, 1998, at 4:00 p.m. Information may be obtained from Cathy Jackson, P.O. Box 400, Paris, Texas 75461, 903/785-7822. TRD-9810909.

Lampasas County Appraisal District, Board of Directors met at 109 East 5th Street, Lampasas, July 16, 1998, at 7:00 p.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 78550-0175, 512/556-8058. TRD-9810914.

Lometa Rural Water Supply Corporation, Board of Directors met at 506 West Main Street, Lometa, July 13, 1998, at 7:00 p.m. every Second Monday of the Month. Information may be obtained from Levi G. Cash, III or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, 512/752-3505. TRD-9810936.

Nolan County Central Appraisal District, Appraisal Review Board met at the Nolan County Courthouse, 10 East Third, Sweetwater, July 17, 1998, at 9:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, 915/235-8421. TRD-9810927.

North Texas Tollway Authority, Board of Directors met at Dallas/Fort Worth Airport Marriott, 8440 Freeport Parkway, Irving, July 15, 1998, at 8:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, 214/522-6200. TRD-9810910.

Palo Pinto Appraisal District, Board of Directors met at 200 Church Avenue, Palo Pinto, July 16, 1998, at 3:00 p.m. Information may be obtained from Carol Holmes or Donna Rhoades, P.O. Box 250, Palo Pinto, Texas 76484, 949/659-1239. TRD-9810923.

Rockwall County Central Appraisal District, Board of Directors met at 106 North San Jacinto, Rockwall, July 14, 1998, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771-2034. TRD-9810962.

Sabine Valley Center, Personnel Committee met at 401 North Grove, (Grove-Moore Center), Marshall, July 15, 1998, at 1:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/267-2362. TRD-9810944.

Region D Regional Water Planning Group, North East Texas Regional Water Planning Group met at the Upshur County Civic Center, Highway 271 North, Gilmer, July 15, 1998, at 3:00 p.m. Information may be obtained from Walt Sears Jr., P.O. Box 955, Hughes Springs, Texas 75656, 903/639-7538. TRD-9810928.

West Central Texas Workforce Development Board, Planning and Oversight Committee met at 1025 EN 10th Street, Abilene, July 15, 1998, 9:00 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9810925.

West Central Texas Workforce Development Board, Monitoring and Evaluation Committee met at 1025 EN 10th Street, Abilene, July 15, 1998, 9:00 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9810918.

West Central Texas Workforce Development Board met at 1025 EN 10th Street, Abilene, July 15, 1998, 10:00 a.m. Information may

be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9810924.

Wood County Appraisal District, Board of Directors met at 210 Clark Street (P.O. Box 518), Quitman, July 16, 1998, at 1:30 p.m. Information may be obtained from Los McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75763-0518, 903/763-4891. TRD-9810907.

Meetings filed July 13, 1998

Bexar Appraisal District, Appraisal Review Board met at 535 South Main Street, San Antonio, July 17, 1998, at 9:00 a.m. Information may be obtained from Sally Kronenthal, P.O. Box 830248, San Antonio, Texas 78283-0248, 210/224-8511. TRD-9811009.

Brazos River Authority, Water Quality Committee Board of Directors met at South Shore Harbour Resort and Conference Center, 2500 South Shore Boulevard, League City, July 20, 1998, at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9811047.

Coryell City Water Supply District, Directors met at 9440 FM 929, Gatesville, July 16, 1998, at 7:30 p.m. Information may be obtained from Helen Swift, 9440 FM 929, Gatesville, Texas 76528, 254/865-6089. TRD-9811043.

Deep East Texas Council of Governments Board of Directors and Grants Application, Review Committee met in a revised agenda at Tiger Drive, West Sabine High School, Pineland, July 23, 1998, at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704. TRD-9811069.

Dewitt County Appraisal District, Board of Directors met at 103 Bailey, Cuero, July 21, 1998, at 7:30 p.m. Information may be obtained from Alice Rickman, P.O. Box 4, Cuero, Texas 77954, 512/275-5753. TRD-9811049.

Education Service Center Region XVII, Board of Directors will meet at 1111 West Loop 289, Lubbock, August 18, 1998, at 3:00 p.m. Information may be obtained from Kyle R. Wargo, 1111 West Loop 289, Lubbock, Texas 79416, 806/792-5468, Ext. 852. TRD-9811008.

Falls County Appraisal District, Appraisal Review Board met at the Intersection of Highway 6 & 7, Falls County Courthouse, 1st Floor, Marlin, July 20, 1998, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, 817/883-2543. TRD-9810972.

Falls County Appraisal District, Appraisal Review Board met in a revised agenda at the Intersection of Highway 6 & 7, Falls County Courthouse, 1st Floor, Marlin, July 20, 1998, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, 817/883-2543. TRD-9811028.

Golden Crescent Workforce Development Board met in a revised agenda at 2401 Houston Highway, Victoria, July 16, 1998, at 4:30 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9810973.

Hall County Appraisal District, Review Board met at 6th and Lyles, Turkey, July 20, 1998, at 9:00 a.m. and at 8th and Robertson, Memphis, July 21, 1998, at 9:00 a.m. Information may be obtained from Anita Phillips, Turkey Community Center, Turkey, Texas 806/259-2393. TRD-9811070.

Hansford County Appraisal District, Appraisal Review Board met at 709 West 7th Street, Spearman, July 16, 1998, at 9:00 a.m.

Information may be obtained from Alice Peddy, 709 West 7th Street, Spearman, Texas, 79081, 806/659-5575. TRD-9810998.

Hood County Appraisal District, Appraisal Review Board met at 1902 West Pearl Street, District Office, Granbury, July 21, 1998, at 9:00 a.m. Information may be obtained from Jeffery D. Law, P.O. Box 819, Granbury, Texas 7604, 817/573-2471. TRD-9811077.

Hood County Appraisal District, Board of Directors met at 1902 West Pearl Street, District Office, Granbury, July 21, 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-9811078.

Limestone County Appraisal District, Board of Directors met at 200 West State, Groesbeck July 21, 1998, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, 200 West State, Groesbeck, Texas 76642, 254/729-3009. TRD-9811048.

Mills County Appraisal District, Board of Directors met at the Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, July 21, 1998, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, 915/648-2253. TRD-9811079.

North Texas Regional Library System, Board of Directors met at 1111 Foch Street, Suite 100, Fort Worth, July 23, 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-9811007.

Region O Regional Water Planning Group, General Membership Committee met at 2930 Avenue Q, Board Room, Lubbock, July 16, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9811045.

TML Group Benefits Risk Pool, Board of Trustees met at Sheraton Fiesta, 310 South Padre Island, June 18, 1998, at 8:30 a.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719-6521. TRD-9811067.

Upper Rio Grande Workforce Development Board met at 5919 Brook Hollow, El Paso, July 16, 1998, at 2:00 p.m. Information may be obtained from Norman R. Haley, 5919 Brook Hollow, El Paso, Texas 79925, 915/772-5627, Ext. 406. TRD-9810970.

Wheeler County Appraisal, Appraisal Review Board met at 117 East Texas, Courthouse Square, Wheeler, July 20, 1998, at 9:30 a.m. Information may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, 806/826-5900. TRD-9811058.

Wheeler County Appraisal, Appraisal Review Board met at 117 East Texas, Courthouse Square, Wheeler, July 21, 1998, at 7:00 p.m. Information may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, 806/826-5900. TRD-9811060.

Meetings filed July 14, 1998

Cass County Appraisal District, Appraisal Review Board met at 502 North Main Street, Linden, July 20, 1998, at 9:00 a.m. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, 903/756-7545. TRD-9811086.

Cass County Appraisal District, Appraisal Review Board met at 502 North Main Street, Linden, July 22, 1998, at 9:00 a.m. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, 903/756-7545. TRD-9811087.

Central Texas Water Supply Corporation, Litigation Committee met at 2711 Exchange Plaza, House of Lee, Temple, July 21, 1998, at 1:00 p.m. Information may be obtained from Delores Hamilton, 4020

Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9811089.

Far West Texas Water Planning Group, Committee met at 1100 North Stanton, 6th Floor Conference Center, El Paso, July 23, 1998, at 10:00 a.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 915/533-0998. TRD-9811093.

Fisher County Appraisal District, Appraisal Review Board met in an emergency meeting at the Fisher County Courthouse, Court Room, Commissioners Court Room, Roby, July 15, 1998, at 9:00 a.m. Reason for the emergency: Over-load with overlapping districts-phones ringing (Alzheimer's disease) hearing scheduled but forgot this form. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, 915/776-2733. TRD-9811097.

Houston-Galveston Area Council, Projects Review Committee met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, July 21, 1998, at 9:00 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/993-4555. TRD-9811084.

Houston-Galveston Area Council, H-GAC Board 1997 Gulf Coast Region Water Quality will meet at 3555 Timmons Lane, Conference Room A, 2nd Floor, Houston, August 4, 1998, at 7:00 p.m. Information may be obtained from H-GAC, 355 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9811102.

Lampasas County Appraisal District, Appraisal Review Board met at 109 East 5th Street, Lampasas, July 20, 1998, at 9:00 a.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550-0175, 512/556-8058. TRD-9811101.

Liberty County Central Appraisal District, Board of Directors met at 315 Main Street, Liberty, July 22, 1998, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, 409/336-5722. TRD-9811100.

Meetings filed July 15, 1998

Archer County Appraisal District, Appraisal Review Board met at 101 South Center, Archer City, July 22, 1998, at 9:30 a.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, 940/574-2172. TRD-9811132.

Bexar Appraisal District, Board of Directors met at 535 South Main, San Antonio, July 22, 1998, at 5:00 p.m. Information may be obtained from Ann Alizondo, P.O. Box 830248, San Antonio, Texas 78283-0248, 210/224-8511. TRD-9811149.

Gonzales County Appraisal District, Appraisal Review Board met at 928 St. Paul Street, Gonzales, July 21, 1998, at 9:00 a.m. Information may be obtained from Lona Haile, 928 St. Paul, Gonzales, Texas 78629, 830/672-2879 or fax 830/672-8345. TRD-9811115.

Hansford County Appraisal District, Appraisal Review Board met at 709 West 7th Street, Spearman, July 21, 1998, at 9:00 a.m. Information may be obtained from Alice Peddy, 709 West 7th Street, Spearman, Texas 79081, 806/659-5575. TRD-9811147.

Houston-Galveston Area Council, Board of Directors met at 3555 Timmons Lane, Conference Room A, 2nd Floor, Houston, July 21, 1998, at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, 713/627-3200. TRD-9811123.

Lamar County Appraisal District, Appraisal Review Board met at 521 Bonham Street, Paris, July 20, 1998, at 9:00 a.m. Information may be obtained from Cathy Jackson, P.O. Box 400, Paris, Texas 75461, 903/785-7822. TRD-9811133.

Lower Neches Valley Authority, Board of Directors met at 7850 Eastex Freeway, Beaumont, July 21, 1998, at 9:30 a.m. Information may be obtained from A.T. Hebert, P.O. Box 5117, Beaumont, Texas 77726-5117, 409/892-4011. TRD-9811128.

Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization met at TxDOT District Office 600 West Expressway US 83, Pharr, July 23, 1998, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas 956/682-3481. TRD-9811138.

North Texas Local Workforce Development Board met at 4309 Jacksboro Highway, Suite 200, Wichita Falls, July 23, 1998, at Noon. Information may be obtained from Mona W. Statser, North Texas Local Workforce Development Board, Suite 106, Wichita Falls, Texas 76302, 940/322-5281 or fax 940/322-2683. TRD-9811137.

Region G Regional Water Planning Group, Scope of Work Committee met at 4400 Cobbs Drive, Waco, July 21, 1998, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9811127.

Wood County Appraisal District, Appraisal Review Board met at 210 Clark Street (P.O. Box 518), Quitman, July 20-23, 1998, at 8:45 a.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, 903/763-4891. TRD-9811124.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Animal Health Commission

Correction of Error

The Texas Animal Health Commission proposed amendments to 4 TAC §§47.1–47.6. The rules appeared in the June 26, 1998, issue of the *Texas Register*, (23 TexReg 6680).

On page 6680, §47.3(a), was published as (No change.), however it should read:

“(a) Collecting samples.

(1) Individual blood collection devices shall be used for each animal.

(2) Each animal shall be individually identified by official eartag [or backtag] or individual registration tattoo or brand. The individual identification must be recorded on the test record to identify the corresponding blood sample.

(3) Tubes containing blood samples will be numbered in sequence. There will be a gap of one or more numbers between the last number assigned to a herd or unit and the first number assigned to the next herd or unit.”



Austin Transportation Study

Development of Travel Demand Model Components for Long Range Plan Update

ADVERTISEMENT FOR SEALED PROPOSALS

AUSTIN TRANSPORTATION STUDY IS REQUESTING SEALED PROPOSALS FROM QUALIFIED BIDDERS FOR THE FOLLOWING PROJECT:

Development of Travel Demand Model Components for Long Range Plan Update (ATS-01-FY 98)

Proposal Packets may be obtained from the Austin Transportation Study Office, Municipal Annex, 1st Floor, 301 West 2nd Street, Austin, Texas 78701. A pre-proposal conference is scheduled for Tuesday, July 21, 1998 at 2:00 p.m. in the Council Chambers at the Municipal Annex.

All proposals must be submitted to the Austin Transportation Study Office at the aforementioned address no later than 4:00 p.m., CST,

Monday, August 10, 1998. No late proposals or faxed proposals will be accepted.

For further information, please contact Lee Hoy, Project Manager, (512) 499-6423.

THE AUSTIN TRANSPORTATION STUDY HEREBY NOTIFIES ALL OFFERORS THAT IN REGARD TO ANY CONTRACT ENTERED INTO PURSUANT TO THIS ADVERTISEMENT, MINORITY BUSINESS ENTERPRISES AND HISTORICALLY UNDERUTILIZED BUSINESSES WILL BE AFFORDED EQUAL OPPORTUNITIES TO SUBMIT OFFERS IN RESPONSE TO THIS INVITATION AND WILL NOT BE DISCRIMINATED AGAINST ON THE GROUNDS OF RACE, COLOR, SEX, NATIONAL ORIGIN, OR DISABILITY IN CONSIDERATION FOR AN AWARD.

TRD-9810952

Michael R. Aulick

Transportation Planning Director

Austin Transportation Study

Filed: July 10, 1998



Texas Commission for the Blind

Request for Proposal of Legal Services

The Texas Commission for the Blind (Commission) requests proposals from attorneys or legal firms interested in providing legal services regarding the Business Enterprises Program (Program), which is administered by the Commission under the authority and provisions of the Randolph-Sheppard Act (20 U.S.C. §§107-107f), the Texas Human Resources Code, Title 5, Chapter 94, and the Texas Administrative Code, Chapter 167. The Program provides employment opportunities for blind persons in food service businesses.

The contract will be for a period of one year beginning September 1, 1998, or for one year from the date of award, with a one-year option to extend. Selection of a contractor will be made on the basis of demonstrated competence and the ability to perform the services at a fair and reasonable price.

NATURE OF SERVICES: The contract will be for providing a wide range of legal services associated with the administration of the Program. The Commission obtains permits to operate food service

and vending locations on state and federal sites; enters into contracts with private entities for the same purpose; and licenses persons who are blind to manage the food service and vending locations. The Randolph-Sheppard Act provides for a grievance system for licensed managers who are dissatisfied with decisions of the Commission. These grievances include administrative hearings and arbitrations. Legal assistance is frequently needed concerning all of these matters.

EXPERIENCE/QUALIFICATIONS Minimum requirements: – The principal attorney(s) must have a minimum of 10 years experience as a licensed attorney in the State of Texas. – The principal attorney(s) must have 5 years of trial court experience in both state and federal courts with preference given for experience in the Federal Court of Claims. – The principal attorney(s) must have 5 years experience in providing counsel for arbitrations. **Preference will be given to:** – attorneys or legal firms that have experience working with the Administrative Procedures Act and have been listed as counsel for at least five administrative proceedings in the last five years; – attorneys or legal firms that have provided advice to a state agency on a continuing basis for at least five years; – attorneys or legal firms that have extensive experience in litigating and arbitrating issues under the Randolph-Sheppard Act, with additional preference given for experience with Federal Court cases in which the Randolph-Sheppard Act was the subject of litigation; – attorneys or legal firms that have acted as lead counsel in arbitrations filed under the Randolph-Sheppard Act.

RESPONSES: Responses to this RFP should include as a minimum the following information: – a description of the firm's or attorney's qualifications for performing the legal services, including the firm's or attorney's prior experience with the Randolph-Sheppard Act; – a description of the firm's or attorney's past experience as counsel for state agencies, including employment with a state agency as an attorney; – the names, experience, and technical expertise of each attorney who may be assigned to work on the contract, and the availability of the lead attorney(s) and others assigned to the project; – disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Commission or to the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed official(s); and – confirmation of willingness to comply with policies, directives, and guidelines of the Commission and the Attorney General of Texas.

The response must also include, in a **separate sealed envelope**, the submission of fee information in the form of hourly rates for each attorney, paralegal, or any other staff, who may be assigned to perform services. The fee information must include all other billable expenses. Travel expenses during the contract period shall be reimbursed in accordance with the State of Texas Travel Regulations and the Official Mileage Guide as they apply to state employees.

Law firms responding to this proposal must have an office in Texas. The firm should have a place of business in Austin, Texas, or be willing to either waive, or substantially limit, the expenses attributable to travel.

The successful law firms and/or attorneys will provide services at an agreed hourly rate that represents at least a 10% discount from the usual rate charged by such attorney and/or firm. Paralegals, upon prior written approval by the Commission, may provide services at an agreed hourly rate that shall represent at least a 10% discount from the usual rate charged by such paralegal.

The successful law firms and/or attorneys will complete and submit an "Affirmative Action Questionnaire" and provide other appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women.

The Attorney General must approve the agreement between the Commission and its counsel. The Attorney General has prescribed a form contract for such agreements and has indicated that he will not approve any variant of this form contract absent exceptional circumstances.

PROPOSAL DEADLINE AND CONTACT PERSON: All proposals must show the proposal opening date and requisition number in lower left hand corner of sealed proposal envelope and show return address of the firm, and must be received by 5:00 p.m, August 17, 1998. No proposals submitted after this time will be considered. Proposals may be mailed or hand-delivered to the Purchasing Department, Texas Commission for the Blind, 4800 N. Lamar, Suite 360, Austin, Texas 78756. Inquiries regarding clarification of specifications can be directed to Ms. Vikki Meeker at (512) 459-2640.

TRD-9811080
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: July 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 Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of July 7, 1998, through July 13, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Great America Companies; Location: A 12.71 acre tract west of State Highway 249, with frontage on Spring-Cypress Road in northwest Harris County, Texas. The proposed mitigation site is located southwest of the intersection of Spring-Cypress Road and State Highway 249 in northwest Harris County, Texas; Project Number 98-0314-F1; Description of Proposed Action: The applicant proposes to fill 6.68 acres of jurisdictional wetlands for the development of a single family subdivision; Type of Application: U.S.C.O.E. permit application number 21291 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: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0307-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Gulf Intracoastal Waterway to Rollover Bay. Seven options for beneficial uses of dredged material were evaluated and three appear to have reasonable costs in proportion to their benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0308-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Gulf Intracoastal

Waterway, Texas to Colorado River Channel. In-river placement has been identified as a potential beneficial use of project generated maintenance dredged material. All current placement areas were identified and are used as described in an Environmental Impact Statement issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0309-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Gulf Intracoastal Waterway Channel to Victoria, Texas. One option for beneficial use of dredged material was evaluated, but does not appear to have reasonable costs in proportion to its benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0310-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Gulf Intracoastal Waterway Channel to Seadrift, Texas. One option for beneficial use of dredged material was evaluated, but does not appear to have reasonable costs in proportion to its benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0311-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Texas City Channel, Texas. One new option for beneficial use of dredged material was evaluated, but does not appear to have reasonable costs in proportion to its benefits. All placement areas are identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0312-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Mouth of Colorado River, Texas. Since the project currently meets the goals of the CMP by using all maintenance dredged material beneficially for beach nourishment, no additional beneficial uses were investigated. All placement areas were identified and either have not yet been used or have been used as described in an Environmental Impact Statement issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineer - Galveston District; Project Number 98-0313-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Gulf Intracoastal Waterway Sabine River to High Island. Four options for beneficial uses of dredged material were evaluated and two appear to have reasonable costs in proportion to their benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural

Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

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-9811109
Garry Mauro
Chairman
Coastal Coordination Council
Filed: July 14, 1998

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Commissioners Court of Zapata County

Notice of Intent

The Commissioners Court of Zapata County, pursuant to House Bill 606, 75th Legislature (1997), the State of Texas that permits a County Commissioners Court of a Rural County (defined as a county with a population of 100,000 or less) to request that the Texas Department of Human Services (TDHS) contract for additional Medicaid Nursing Facility Beds with the Texas Department of State Medicaid Program for Zavala County without regard to the occupancy rate of available Medicaid beds.

The Commissioners Court hereby requests that interested parties submit comments on whether the request should be made. Further, the Commissioners Court request proposals from persons interested in providing these additional Medicaid beds in the county.

Interested parties must forward comments and/or proposals to Zavala County Commissioners Court no later than August 10, 1998, to: Office of the County Judge, Honorable Pablo Avila, Zavala County Courthouse, Crystal City, Texas 78839; telephone (210) 374-3810.

If the Commissioners Court determines to proceed with a request after considering all comments and proposals received, it may recommend that the Texas Department of Human Services contract with a specific nursing facility that submitted a proposal. In making its decisions, the Commissioners Court must consider the following:

1. The demographic and economic needs of the county;
2. The quality of existing nursing facility services under the State Medicaid Program in the county;
3. The quality of the proposals submitted; and
4. The degree of community support for additional nursing facility services.

TRD-9810889
Pablo Avila
Zavala County Judge
Commissioners Court of Zavala County
Filed: July 9, 1998

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Comptroller of Public Accounts

Notice of Amendment of Statewide Disparity Study of Higher Education Contract

The Comptroller of Public Accounts (Comptroller) announces its intention to amend its contract with National Opinion Research Center (NORC) to assist the Comptroller in conducting a statewide Disparity Study of Higher Education, unless a better offer is received from another private consultant. The Comptroller's contract with NORC was executed on February 26, 1998. Based on the work done to date, the Comptroller has determined that additional work will be necessary to insure that the State receives a comprehensive and reliable study. Such additional work will be conducted during the period September 1, 1998 through November 1, 1998 with an anticipated budget not to exceed \$45,000. The work to be performed is described in the Request for Proposals issued by the Comptroller in the original procurement of the disparity study of higher education contract, and will be of the same nature as NORC has already completed under the project conducting additional surveys, obtaining additional data from state agencies, and creating the necessary databases. To secure these services, the Comptroller intends to amend its contract with NORC unless a better offer is received from another private consultant.

The comptroller invites private consultants to submit proposals. Questions should be directed to Walter Muse, legal Counsel, (512) 475-0498. Proposals must be received by the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774 no later than 4:00 p.m. (CZT) on August 7, 1998. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation by a committee based on the criteria established by the Comptroller in the Request for Proposals.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice. This notice does not commit the Comptroller to pay for any costs incurred prior to the execution of a contract.

TRD-9811131
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: July 15, 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 07/20/98 - 07/26/98 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/20/98 - 07/26/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9811088

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 14, 1998

Texas Department of Criminal Justice

Notice of Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Texas Department of Criminal Justice (TDCJ) announces this notice of contract award.

TDCJ's Request for Offers (RFO) for Independent Verification and Validation Services was published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4383).

As described in the RFO, the selected vendor will provide TDCJ with Independent Verification and Validation services in support of the Department's Offender Information Management Reengineering initiative.

The contract has been awarded to Logicon RDA, P.O. Box 92500, Los Angeles, California, 90009. The total dollar value of the contract is not to exceed \$586,673. The period of performance of the contract is June 2, 1998, through February 28, 1999.

TRD-9810906
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 10, 1998

Texas Education Agency

Request for Proposals Concerning Production of Large Type Textbooks for Texas Public Schools

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) number 701-98-022 from nonprofit organizations, private companies, and regional education service centers to produce large type textbooks that are to be adopted by the State Board of Education in November 1998. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to ensure that Texas students receive quality large type textbooks, delivered on time, at an economical price.

The proposer selected for the contract will be responsible for producing large type versions of instructional materials designated in this RFP. The adopted textbooks to be enlarged have been arranged into a single production package.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 4, 1999, and an ending date of no later than August 31, 2005.

Project Amount. One contractor will be selected to receive a maximum of \$1 million during the contract period.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. Proposers will be asked to submit a sample of their work. The TEA will base its selection on, among other things, the demonstrated

competence and qualifications of the proposer. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP number 701-98-022 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 RFP number in your request.

Further Information. For clarifying information about this RFP, please contact Charles E. Mayo, Division of Textbook Administration, Texas Education Agency, Room 3-118, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, (512) 463-9601 or e-mail at cmayo@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, September 11, 1998, to be considered.

TRD-9811241

Criss Cloudt

Associate Commissioner for Policy Planning and Research

Texas Education Agency

Filed: July 16, 1998



General Services Commission

Notice to Bidders for Project Number 91-002J-303

Sealed bids will be received by General Services Commission (GSC), Facilities Construction and Space Management Division (FCSM), 1711 San Jacinto, Bid Room, Room 180, Austin, Texas 78701, (P.O. Box 13047, Austin Texas, 78711), tel: (512) 463-3417, on Tuesday, August 11, 1998, at 3:00 pm, for:

Project Number 91-002J-303, parking garage renovations, hobby complex parking garage, 300 San Antonio, Austin, Texas 78701. Cost is estimated at \$150,000.

Bid Receipt Location: Bid Services, Room 180, 1711 San Jacinto, Austin, Texas 78701.

Contractor Qualifications: prime contractors are required to submit information to the FCSM Division, 1711 San Jacinto, Austin, Texas 78701, on FCSM's contractor qualification form no later than 5:00 pm, on August 4, 1998, to document compliance with contractor's qualification requirements for this project. A form is included in the specifications or telephone (512) 463-3417 to obtain form. Information is to be used in determining if a contractor is qualified to receive a contract award for the project.

Bid Documents: plans and specifications will be available July 13, 1998, for prime contractors from Graeber, Simmons and Cowan, 100 Congress Avenue, Suite 100, Austin, Texas 78701, Tel. 477-9417, fax: 477-9675. A deposit of \$500 per set will be required for plans and specifications. Bid documents will be available for review at the FCSM's office, the architects' office, and the plan rooms of associated building contractors, associated general contractors, builders exchange and the dodge company.

Pre-Bid Conference: there will be a pre-bid conference at the lobby of the William P. Hobby, Jr. Building, 333 Guadalupe, Austin, Texas 78701 on Tuesday, August 4, 1998, at 3:00 pm.

Any questions regarding this project should be directed to John Davenport at (512) 463-3216 or email address: john.davenport@gsc.state.tx.us.

TRD-9810938

Judy Ponder

General Counsel

General Services Commission

Filed: July 10, 1998



Texas Department of Health

Correction of Error

The Texas Department of Health proposed repeal of §§229.161-229.171, 229.173, and 229.231-229.239. The rules appeared in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5570).

On page 5576, definition 98, the word "serice" should be "service".

On page 5604, §229.166(l)(1), the paragraph was published as being divided and should be published as one paragraph.



Notice of Amendment to Uranium By-Product Material License of Conoco, Incorporated

The Texas Department of Health (department) gives notice that uranium by-product material license RW01634 issued to Conoco, Incorporated, for its Conquista Project located in Karnes County 8 miles west of Falls City, Texas, on FM Road 791 (mailing address: P.O. Box 309, Falls City, Texas 78113) has been amended June 15, 1998, to: delete or modify references and conditions pertaining to certain expired and/or terminated authorizations, modify the environmental monitoring program to reflect procedural and regulatory changes in groundwater sampling, delete or modify references to reflect the change of rule reference from the *Texas Regulations for Control of Radiation* to the Texas Administrative Code, delete or modify references and conditions to reflect the change in authority from the Texas Natural Resource Conservation Commission to the Texas Department of Health, and renumber the license to Radioactive Material License L01634 to reflect the transfer of jurisdiction to the department by the 75th Session of the Texas Legislature. This transfer was effective July 20, 1997.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC) Chapter 289, that the licensee has met the standards appropriate to this amendment: (a) The licensee, Conoco, Incorporated, is qualified by reason of training and experience to use the material in question for the purpose requested in such a manner as to protect public health and safety, and the environment; (b) the applicant's equipment, facilities, and procedures are adequate to protect public health and safety, and the environment; (c) the issuance of the license amendment will not be inimical to public health and safety, nor have a long-term detrimental impact on the environment; (d) the applicant has demonstrated financial capability to conduct the activity including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance (if necessary); and (e) the applicant satisfies all applicable special requirements in 25 TAC §289.260. No environmental assessment is necessary for this action, since the

department has determined that the action will not have a significant impact on the human environment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment to the license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A "person affected" is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license will remain in affect.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting 8407 Wall Street, Austin, Texas.

TRD-9810878
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 1998



Notice of Emergency Cease and Desist and Impoundment Order on New Century Wireline

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered New Century Wireline (UNLICENSED) of Friendswood to immediately cease and desist use of any licensable amount of radioactive material. The order also requires New Century Wireline to immediately transfer, for storage or disposal, the radioactive material it owns or possesses to a company authorized to possess the radioactive material. The bureau determined that continued unauthorized possession and/or use of the radioactive material without a valid license constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until New Century Wireline has either properly transferred or disposed of the radioactive material, and has provided the bureau with documentation on the actions taken, or has obtained a radioactive material license authorizing possession, storage and/or use of the radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9810881
Susan K. Steeg
General Counsel

Texas Department of Health
Filed: July 9, 1998



Notice of Intent to Revoke the Certificate of Registration on Health Tech International

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Health Tech International, Mesa, Arizona, R23606. .

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9810879
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 1998



Texas Department of Housing and Community Affairs

Notice of Public Hearing

On or about October 1, 1998, The Administration & Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans. The Department is now in the process of deciding how these funds will be used and is seeking the input of groups affected by these programs and/or other interested citizens.

As part of the public information consultation and public hearings requirements for the Low Income Home Energy Assistance Program, the Administration & Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) will conduct one public hearing. The primary purpose of the hearings is to solicit comments on the proposed use and distribution of Federal Fiscal Year (FFY) 1999 funds provided under the Low Income Home Energy Assistance Program (LIHEAP). LIHEAP provides funding for the Weatherization Assistance Program (WAP) and the

Comprehensive Energy Assistance Program (CEAP). The public hearing has been scheduled as follows:

Wednesday, August 5, 1998, 2:00 p.m. at the Carver Library, 1161 Angelina Street, Austin, TX

A representative from TDHCA will be present at the meeting to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plans. Copies of the Intended Use Report can be obtained by contacting the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941, or accessing the Department internet site at www.tdhca.state.tx.us. For questions, contact the Administration & Community Affairs Division at (512) 475-1099.

Comments on the intended use of funds may be in the form of written comments or oral testimony at the public hearing. Written comments must be received no later than Tuesday, August 11, 1998. Comments concerning the LIHEAP may be submitted to Nieves Lopez at TDHCA using the address provided above, or via the internet using nlopez@tdhca.state.tx.us. If you have any questions regarding the public hearing process, or any of the programs referenced above, please contact the Community Affairs Division at (512) 475-1099.

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-9811136

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs
Filed: July 15 1998



Request for Proposal

TO PROVIDE TECHNICAL ASSISTANCE EDUCATIONAL SERVICES TO A 30 COUNTY AREA IN THE ALAMO AREA, COSTAL BEND, LOWER RIO GRANDE VALLEY, MIDDLE RIO GRANDE, PERMIAN BASIN, RIO GRANDE, SOUTH TEXAS REGIONAL AREAS, AND WEST CENTRAL TEXAS

The Texas Department of Housing and Community Affairs (TDHCA) is accepting proposals for a one-year contract with a qualified entity or individual to provide contract for deed consumer education workshops in thirty designated counties located within 200 miles of the Texas-Mexico border. The entity or individual will provide consumer education workshops to educate colonia residents, local officials, land developers, and other interested parties on the new provisions of the executory contract for deed transaction and the rights of a buyer purchasing residential land with a contract for deed. TDHCA's Office of Colonia Initiatives (OCI) will provide the initial training on contract for deed to the interested entity or individual.

The contract for deed consumer education workshop curriculum includes: What is a Contract For Deed; Negative Aspects of the Contract For Deed; Determination and Notice of Applicability; Spanish Language Requirement; Seller's Disclosure of Condition of the Property; Seller's Disclosure of Financial Terms; Contract Terms Prohibited; Annual Accounting Statement; Buyer's Right to Cancel Contract Without Cause; Forfeiture and Acceleration or Rescission; Notice of Forfeiture and Acceleration or Rescission; Equity Protection: Sale of Property, Placement of Lien for Utility Service; The Buyer's Right to Pledge Interest In Property On Contracts Entered Into Before September 1, 1995; Recording Requirements; and Title Transfer.

Interested parties should have experience in executing educational workshops; considerable experience working with colonia residents and/or low income populations; have geographical knowledge of colonias and/or substandard living conditions in the (30) designated counties; be knowledgeable of the basic process of a contract for deed transaction, and have experience marketing to colonia residents or low income populations.

Proposals must be received at TDHCA headquarters no later than 5 p.m. on Monday, August 14, 1998. Email Juan Palacios jpalcio@genesis.tdhca.state.tx.us or Ann Garcia agarcia@genesis.tdhca.state.tx.us or call 1-800-462-4251, Office of Colonia Initiatives for more information.

TRD-9810850

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs
Filed: July 9, 1998



Texas Department of Human Services

Correction of Error

The Texas Department of Human Services (DHS) submitted an amendment to 40 TAC §19.602. The rule appeared in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6705).

On page 6706, §19.602(b)(1) should be shown as proposed to be deleted: "[(1) exploitation of residents;]"

Also on page 6706, in §19.602(b)(2) that is shown as new proposed language the phone number should be (512) 438-3819.



Texas Department of Insurance

Building Code Advisory Committee Meeting Notice

The Building Code Advisory Committee of the Texas Department of Insurance will hold a meeting on July 31, 1998, at 10:30 a.m. at the Hobby Hilton Hotel, 8181 Airport Blvd., Houston, Texas, to discuss and make recommendations on proposed changes to the Building Code for Windstorm Resistant Construction (Code). The Code becomes effective on September 1, 1998, for certain designated catastrophe areas on the Texas coast. The Department's Engineering staff will present several proposed changes to the Code, including those changes discussed at the May 20th Committee meeting in Corpus Christi.

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 on 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.

This agency hereby certifies that the purpose of the meeting has been reviewed by legal counsel and is found to be within the agency's authority to hold such meeting.

TRD-9811139
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 15, 1998



Insurer Services

The following application has been filed with the Texas Department of Insurance and is under consideration:

Application for admission to Texas for AMERICAN HORIZON PROPERTY & CASUALTY INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Deerfield, Illinois.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9811140
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 15, 1998



Notice of Public Hearing

Notice is hereby given that the Commissioner of Insurance or his delegatee will hold a public hearing in Docket Number 2373 to gather information on Holocaust survivors' insurance claim recoveries. This is an information gathering hearing which is being held for the purpose of soliciting input on Holocaust survivors' insurance claims and any impediments to claim recovery. All interested parties are invited to attend and participate.

The hearing will be held on August 6, 1998, at 10:00 a.m. at the Holocaust Museum, 5401 Caroline Street, Houston, Texas, (713) 942-8000. Further information may be obtained from Angie Arizpe at (512) 463-6326.

This hearing is held pursuant to the Insurance Code, Article 1.04C, which requires the Commissioner to provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Texas Department of Insurance is also a signatory to a Memorandum of Understanding between Swiss, German and Italian regulators and other state regulators to bring resolution to these claims.

TRD-9810806
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 8, 1998



Texas State Board of Medical Examiners

Solicitation of Proposal

The Texas State Board of Medical Examiners hereby provides notice of a solicitation for proposal from qualified parties for the following services as described.

The selected vendor will assess agency operations and develop specific strategies to improve agency operations. Engagement will include Administrative, Investigations, Licensing and Hearing Departments. Areas analyzed will include current business processes, utilization of information technologies, organizational staffing, assessment of current work levels, performance reporting, document management, evaluation of enabling technologies, and impact study of physician profiling. Vendor must prove experience of providing such service to a small or mid-size Texas State regulatory agency within past two years.

Service must begin before August 31, 1998. Cost must be below \$100,000.

Service will be provided to the Texas State Board of Medical Examiners. The agency is a regulatory agency responsible for licensing and enforcement for physicians, acupuncturists, and physician assistants.

Questions regarding interest in this solicitation should be directed to Lilly Farris, Purchaser, at 305-7063, or Wallace Lankford, Director of Finance, at 305-7051.

Selection will be made on August 15, 1998.

TRD-9810961
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: July 10, 1998



Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted new §§116.110-116.112, 116.114-116.118. The rules appeared in the July 3, 1998, issue of the *Texas Register*, (23 TexReg 6985).

On page 6985, §116.110(c), paragraph (3) should be indented to appear as a separate paragraph under paragraph (2), rather than merged into the text of paragraph (2).



Enforcement Orders, Week Ending July 15, 1998

An agreed order was entered regarding MELVIN AND DEBBIE BLOCK DBA SUSAN CIRCLE COMMUNITY WATER SYSTEM, Docket Number 97-1091-PWS-E; TNRCC PWS ID Number 1810083; Enforcement ID Number 6996 on July 7, 1998 assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0573 or Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DEL RIO, Docket Number 97-0221-PWS-E; PWS Number 2330001; Enforcement ID Number 11638 on July 7, 1998 assessing \$4,285 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Napier, Enforcement Coordinator at (512) 239-6063, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MATLOCK ENTERPRISES, Docket Number 98-0182-PST-E; PST Owner ID Number 19907 on July 7, 1998.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0573, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF WHARTON, Docket Number 97-0979-MWD-E; Water Quality Permit Number 10381-002; Enforcement ID Number 11736 on July 7, 1998 assessing \$3,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Smith, Enforcement Coordinator at (512) 239-4484, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FORNAX INDUSTRIES, INC., Docket Number 98-0010-MWD-E; Water Quality Permit Number 12528-001; Enforcement ID Number 12038 on July 7, 1998 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Claudia Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAVIER ESCARSEGA DBA JASMIN AUTO SALES, Docket Number 97-1190-AIR-E; Account Number EE-2027-J; Enforcement ID Number 12014 on July 7, 1998 assessing \$375 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLARA BARRIO DBA BAMA MOTORS, Docket Number 98-0161-AIR-E; Account Number EE-1967-F; Enforcement ID Number 12147 on July 7, 1998 assessing \$375 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUSTER PAVING COMPANY, INCORPORATED, Docket Number 97-1150-AIR-E; Account Number LA-0078-N; Enforcement ID Number 12045 on July 7, 1998 assessing \$1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAR PRODUCTS, Docket Number 97-0882-AIR-E; Account Number CP-0356-L on July 7, 1998 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Edge, Enforcement Coordinator at (512) 239-1779,

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANK'S CUSTOM CENTER, Docket Number 97-0547-AIR-E; Account Number EE-0503-M on July 7, 1998 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Hodgson Eckel, Staff Attorney at (512) 239-2195 or Gloria Stanford, Enforcement Coordinator at (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BURLY HEAD, D/B/A TEXAS METAL FINISHING, Docket Number 96-1546-IHW-E; TNRCC ID Number 52028; Enforcement ID Number 1760 on July 7, 1998 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Lazard, Staff Attorney at (512) 239-0674 or Anne Nyffenegger, Enforcement Coordinator at (512) 239-2554, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXACO EXPLORATION AND PRODUCTION, INC., Docket Number 97-1040-AIR-E; Account Number HT-0059-L; Enforcement ID Number 11697 on July 7, 1998 assessing \$46,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kevin Cauble, Enforcement Coordinator at (512) 239-1874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9811119
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 15, 1998



Extension of Written Comments Deadline (Chapter 106)

In the June 19, 1998, issue of the *Texas Register* (23 TexReg 6386), the Texas Natural Resource Conservation Commission (commission) published proposed amendments to 30 TAC §106.261, concerning Facilities (Emission Limitations) and §106.262, concerning Facilities (Emission and Distance Limitations). The preamble to the proposed amendments stated that a public hearing regarding the proposal would be held July 14, 1998, and that the commission must receive all written comments by 5:00 p.m., July 20, 1998. The commission has extended the deadline for receipt of written comments to 5:00 p.m., August 3, 1998.

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98019-106-AI. For further information, please contact Susana Hildebrand, New Source Review Permits Division, (512) 239-1562, Dale Beebe-Farrow, New Source Review Permitting Division, (512) 239-1310, or Jim Dodds, Air Policy and Regulations Division, (512) 239-0970.

TRD-9811104
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1998

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Notice of Application to Appropriate Public Waters of the State of Texas

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued on July 10, 1998.

TOLLWAY-121 PARTNERS, LTD., 4099 McEwen, Suite 370, Dallas, Texas 75244; Application Number 5612 for a permit to construct and maintain three dams and reservoirs on an unnamed tributary of Stewart Creek, tributary of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin for in-place recreational use in Collin County. The applicant plans to contract with the City of Dallas for a maximum of 10 acre-feet of raw water for initial fill water. The remainder of the initial fill water and water which will be used to maintain the reservoirs full at all times will be purchased from the City of Plano Water System. The total surface area of the three lakes will be 3.25 acres and the total storage capacity will be 15.75 acre-feet.

CITY OF IRVING, 825 West Irving Boulevard, Irving, Texas 75060; Application Number 5136A to amend Water Use Permit Number 5136 to remove or extend the termination date included in the permit. No other changes are requested. Water Use Permit 5136 currently authorized the applicant to divert not to exceed 340 acre-feet of water per annum from the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, in Dallas County, Texas. Water is authorized to be diverted to an off-channel reservoir for subsequent irrigation of a 160-acre golf course approximately 7 miles west of Dallas, Texas. The permit has a time priority of May 29, 1987, and includes a condition that it would become null and void on August 31, 1997 unless prior to such date the permittee applied for an extension and it was subsequently granted. Application Number 5136A was received on August 11, 1997.

WATERS EDGE, LTD., P. O. Box 248, Austin, Texas 78767; Application Number 5610 for a permit to authorize construction and maintenance of two dams and reservoirs on an unnamed tributary of White Rock Creek, tributary of the Trinity River, Trinity River Basin for in-place recreational use as part of a subdivision in Collin County, approximately 14.4 miles southwest of McKinney, Texas. Because of the lack of water available for appropriation at the applicant's site, they have agreed to obtain an upstream water supply contract with the City of Dallas Water Utilities for the initial fill of the reservoirs, and maintain an upstream water supply contract with the City to offset annual evaporation or keep the lakes full at all times with a separate source of water.

The Executive Director may approve these applications unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC within 30 days after newspaper publication of the notice of application. 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 approve the application 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.

If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. 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-9811118

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 15, 1998

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 1998**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these Default Orders should be sent to the attorney designated for each Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 1998**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1)COMPANY: Gene Lowenthal; DOCKET NUMBER: 98-0381-OSS-E; Enforcement ID Number 11918; LOCATION: Groesbeck, Limestone County, Texas; TYPE OF FACILITY: septic tank service; RULE VIOLATED: 30 TAC §285.107(a)(5) and Texas Health and Safety Code, §366.071 by installing an on-site sewerage facility

without holding a certificate of registration; 30 TAC §285.12(a)(1), (2), and (4)(A) and Texas Health and Safety Code, §366.004 by failing to install correctly an on-site sewerage facility that meets design requirements; 30 TAC §285.107(a)(5) and Texas Health and Safety Code, §366.071, by installing an on-site sewerage facility without holding a certificate of registration; 30 TAC §285.103(a) and Texas Health and Safety Code, §366.051(a) and §366.051(c), by failing to submit a permit, failing to inform the commission of the date of installation, and failing to ensure that the system was inspected; PENALTY: \$2,750; STAFF ATTORNEY: Robin Houston, Litigation Support Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(2)COMPANY: Agustin Hernandez, Manuel Hernandez, and Modesto Hernandez, dba Triple H Mart, and Ida Salinas; DOCKET NUMBER: 97-0893-PST-E; TNRCC NUMBER: 48887; LOCATION: Pharr, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) by failing to provide release detection for underground storage tanks; 30 TAC §334.50(b)(2) by failing to provide release detection for the lines associated with the underground storage tanks; 30 TAC §334.51(b)(2)(B) by failing to provide spill containment for the underground storage tanks; 30 TAC §334.51(b)(2)(C) and Texas Water Code, §26.121(a)(2), by failing to provide overflow equipment for the underground storage tanks and by allowing a discharge of waste from the Facility; 30 TAC §334.21 and §334.22, by failing to pay annual facility fees; PENALTY: \$17,000; STAFF ATTORNEY: Ali Abazari, Litigation Support Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (956) 425-6010.

TRD-9811129
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: July 15, 1998



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (TWC), §7.075. Section 7.705 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments

about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 1998**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Craig Penfold dba Village Oaks Mobile Home Community; DOCKET NUMBER: 97-0637-MWD-E; TNRCC ID NUMBER: 12667-001; LOCATION: 500 feet east of Farm-to-Market Road 2499 and 1,000 feet north of the Denton-Tarrant County boundary, Denton County, Texas; TYPE OF FACILITY: domestic wastewater treatment facility; RULES VIOLATED: Permit Number 12667-001 and Texas Water Code, §26.121, by discharging sludge from the Facility; Permit Number 12667-001 and Texas Water Code, §26.121 by failing to meet the permitted grab sample limit for biochemical oxygen demand; Permit Number 12667-001 and Texas Water Code, §26.121 by failing to meet the permitted grab sample limit for total suspended solids; Permit Number 12667-001 and Texas Water Code, §26.121 by failing to meet the permitted minimum chlorine residual; PENALTY: \$23,760; STAFF ATTORNEY: Cecily Small Gooch, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2)COMPANY: Odell Geer Construction; DOCKET NUMBER: 97-1029-AIR-E; TNRCC ID NUMBER: 90-6084-C; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.115(a), Permit Number 6084A, Special Condition Number 3, and Agreed Order Number 96-1819-AIR-E by exceeding the permitted 5.0% opacity limit on two separate occasions; PENALTY: \$6,250; STAFF ATTORNEY: Lisa Hernandez, Litigation Support Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(3)COMPANY: Petrus Hubertus Van Rijn; DOCKET NUMBER: 97-0891-AGR-E; ENFORCEMENT ID NUMBERS: 11662 and 11707; LOCATION: Como, Hopkins County, Texas; TYPE OF FACILITY: multiple dairies; RULES VIOLATED: 30 TAC §321.37(a) and Texas Water Code, §26.12 by allowing the unauthorized application of wastewater on adjacent property not owned by Van Rijn; 30 TAC §321.37(a) and Texas Water Code, §26.121, allowing the unauthorized discharge of wastewater adjacent to waters in the state, and failing to maintain a necessary buffer zone by allowing disposal of sludge into a low area within 100 feet of a drainage channel; and 30 TAC §321.33(d) by failing to obtain a permit for milking more than 250 head of dairy cattle; PENALTY: \$7,960; STAFF ATTORNEY: Kara Salmanson, Litigation Support Division MC 175, (512) 239-1738; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756 (903) 535-5100.

(4)COMPANY: J.C. Viramontes, Inc. dba International Garment Processors; DOCKET NUMBER: 97-0907-AIR-E; TNRCC ID NUMBER: EE-0692-F; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: stone wash jeans plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085 (a) and (b) by allowing the discharge from wastewater treatment ponds of one or more air contaminants in such concentration and of such duration to adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: \$45,000; STAFF ATTORNEY: Lisa Uselton Dyar, Litigation Support Division, MC

175, (512) 239-5692; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9811130

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 15, 1998



Notice of Opportunity to Comment on Proposal for Decision and Order

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on July 8, 1998 on Executive Director's Preliminary Report Assessing Administrative Penalties and Requiring Certain Actions of Milwhite, Inc.; SOAH Docket Number 582-97-1498; TNRCC Docket Number 97-0069-AIR-E.

Comment period will end 30 days from date of publication.

TRD-9811117

Douglas A. Kitts

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: July 15, 1998



Provisionally-Issued Temporary Permits to Appropriate State Water During the Period of July 14, 1998

Listed below are permits issued during the period of July 14, 1998:

Application Number TA-7965 by Edward Coufal for diversion of 10 acre-feet in a 1-year period for irrigation (irrigate feed crops) use. Water may be diverted from DP #1 a reservoir on an unnamed tributary of Little Elm Creek and DP #2 a reservoir on an unnamed tributary of Camp Creek, tributaries of Big Elm Creek, Tributary of the Brazos River, Brazos river Basin. DP #1 is approximately 13 miles southeast of Belton, Texas near FARM-TO-MARKET ROAD 3117 and DP #2 is approximately 19 miles southeast of Belton, Texas near FARM-TO-MARKET ROAD 485.

Application Number TA-7973 by Dean Mikeska for diversion of 10 acre-feet in a 6-month period for irrigation use. Water may be diverted from the Little River, approximately 19 miles southeast of Belton and 20 miles southwest of Rogers in Bell County, Texas, near the crossing of FARM-TO-MARKET ROAD 2184 and the Little River.

Application Number TA-7974 by Asphalt Paving and Construction for diversion of 1 acre-foot in a 1-year period for industrial (roadway construction) use. Water may be diverted from the San Antonio River, San Antonio River Basin, approximately 1 mile south of Goliad, Goliad County, Texas at the crossing of US HWY 183 and the San Antonio River.

Application Number TA-7975 by Elias Dugi for diversion of 10 acre-feet in a 6-month period for irrigation (irrigation of crops) use. Water may be diverted from Cibolo Creek, San Antonio River Basin, approximately 15 miles southeast of Floresville, Wilson County, Texas near FARM-TO-MARKET ROAD 541 and Cibolo Creek.

Application Number TA-7976 by Harris Road Co. for diversion of 3 acre-feet in a 1-year period for industrial use. Water may be diverted from the Blanco River, approximately 11 miles northwest of San Marcos, Hays County, Texas near the crossing of FARM-TO-MARKET ROAD 12 and the Blanco River.

Application Number TA-7977 by Trunkline Gas Co. for diversion of 5 acre-feet in a 6-month period for industrial use. Water may be diverted from the San Antonio River, approximately 9.2 miles east-southeast of Goliad, Goliad County, Texas near the crossing of the pipeline and the San Antonio River northeast of FARM-TO-MARKET ROAD 239.

Application Number TA-7979 by Exxon Co. USA for diversion of 10 acre-feet in a 6-month period for soil washing (process for an oil and gas pit closure) purposes. Water may be diverted from the Cowart Creek, approximately 5 miles north of Alvin and 2/3 mile upstream from the crossing of Cowart Creek with Hwy. 2351 in Brazoria County, Texas.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9811116

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 15, 1998



Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) is requesting nominations for an individual to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) for the following position:

An elected official from a municipality with a population fewer than 25,000. (Un-expired Term Ends August 31, 1999).

The Municipal Solid Waste Management and Resource Recovery Advisory Council was created by the 69th Legislature (1983) and is currently composed of 16 members representing various interests; i.e., city and county solid waste agencies, a commercial solid waste landfill operator, solid waste districts/authorities, an environmentalist, city and county officials, a financial advisor, a professional engineer, a solid waste professional, a composting/recycling manager, and two general public representatives.

Upon request from the TNRCC Commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to

encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas.

A minimum of four Council meetings are held each year. The meetings usually last one full day and are held in Austin, Texas. Members are not reimbursed for expenses incurred to attend meetings and do not receive financial compensation.

To nominate an individual: a) ensure the individual is an elected official from a municipality with a population fewer than 25,000; b) submit a biographical summary including experience.

The nominee should: submit a letter indicating his/her agreement to serve, if appointed.

Address: nominations should be sent to: Gary W. Trim, Special Programs Director, Municipal Solid Waste Division, TNRCC, P.O. Box 13087, MC 124, Austin, Texas 78711-3087 or fax to (512) 239-6717.

Deadline: written nominations and letters from nominees must be received by the TNRCC by 5:00 p.m., on August 24, 1998.

Appointments will be made by the TNRCC Commissioners.

Questions regarding the Municipal Solid Waste Management and Resource Recovery Advisory Council can be directed to Mr. Trim at (512) 239-6708.

TRD-9811114

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 15, 1998



North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 8, 1998 issue of the *Texas Register* (22 TexReg 6705). The selected consultant will perform the technical and professional work for Pavement Data Collection and Evaluation for the 1998 Transportation Improvement Program-Urban Street Program.

The consultant selected for this project is Rust Lichliter/Jameson, 1420 W. Mockingbird Lane, Suite 300, Dallas, Texas 75247-4906. The maximum amount of this contract is \$27,410. Work on this project began May 29, 1998, and all work will be completed by July 13, 1998.

TRD-9811001

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: July 13, 1998



North Texas Local Workforce Development Board

Request for Proposals — Workforce Centers Operator

North Texas Local Workforce Development Board is seeking proposals for the management of its Workforce Centers, incorporating at a minimum: Job Training Partnership Act (JTPA), Temporary Assistance for Needy Families (TANF)/Choices and Food Stamp Employment and Training (FSE&T). Funds available for this contract are approximately \$2,000,000. The contracting period will be September 1, 1998 through June 30, 2000. Proposals will be accepted until 4:00 p.m., Monday, August 17, 1998 at 4309 Jacksboro Highway, Suite 106, Wichita Falls, Texas 76302.

To ensure that information relevant to this procurement is disseminated to all bidders through the RFP process, only type written or faxed questions will be accepted. Address all questions and/or correspondence to Barbara A. Young, Administrative Technician at the previously listed address or fax to (940) 322-2683. Questions must be received by 5:00 p.m. on July 27, 1998, all questions and answers will be mailed to interested parties by July 31, 1998. **No questions will be answered over the telephone and no questions will be allowed after July 27, 1998.**

Request for Proposal packets may be obtained by written or faxed requests only, contact Barbara A. Young, North Texas LWDB, address listed previously, FAX (940) 322-2683. North Texas Local Workforce Development Board reserves the right to accept or reject any or all proposals.

TRD-9810833

Mona Williams Statser

Executive Director

North Texas Local Workforce Development Board

Filed: July 8, 1998



Texas Parks and Wildlife Department

Executive Director Order Number 98-001

Nothing in the Public Hunting Lands Proclamation or State Parks Proclamation prohibits a person from possessing a concealed handgun, loaded or unloaded, under the authority of a concealed handgun license issued by this state or any other state. Persons carrying concealed handguns must comply with the concealed handgun laws.

The Executive Director Reserves the right to prohibit the carrying of all firearms during certain events or in certain locations on Departmental lands.

This order is issued pursuant to Title 31, Texas Administrative Code, §59.134(f)(1) and §65.199, and is effective immediately.

TRD-9810867

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: July 9, 1998



Public Utility Commission of Texas

Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 10, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Promotional Rates for Residence Customers Who Subscribe to The WORKS or The BASICS Service Between August 1, 1998 and September 30, 1998, Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 19590.

The Application: SWBT filed an application to institute promotional rates for residence customers in Texas, who subscribe to The WORKS or The BASICS Service between August 1, 1998 and September 30, 1998. During the promotional period, new subscribers of The WORKS or The BASICS will receive a bonus certificate redeemable for a \$20 check made out to the customer. In addition, new subscribers of The WORKS or The BASICS who also subscribe to Call Waiting ID or Call Waiting ID Options will also receive a bonus certificate redeemable for a \$5.00 check.

Persons who wish to intervene in this proceeding 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 by July 29, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811106
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 1998

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Correction of Error

The Public Utility Commission of Texas submitted a Notice of Application for Service Provider Certificate of Operating Authority. The notice appeared in the July 3, 1998, issue of the *Texas Register*, (23 TexReg 7140).

In paragraph one, fourth line, "AT & Microelectronics (Lucent Technologies)" should read "AT&T Microelectronics (Lucent Technologies)".

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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 of an application on July 8, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of FlashNet Telecom, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19584 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange switched services on a resale basis from the underlying incumbent local exchange carriers (ILECs) or other certified carrier, using unbundled network elements obtained from ILECs, using services and facilities provided by other carriers, and using facilities owned or operated by the Applicant.

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 July 29, 1998. Hearing and

speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810960
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 9, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of digital broadcast network corporation, d/b/a data delivery network for a Service Provider Certificate of Operating Authority, Docket Number 19520 before the Public Utility Commission of Texas.

Applicant intends to offer telecommunications services which involve the provision of facilities for the transmission of voice and data communications over networks operated by existing, certified interexchange carriers and local exchange companies in the state of Texas.

Applicant's requested SPCOA geographic area includes the entire state of Texas served by Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company of Texas, Inc., and any other eligible local exchange carrier, except for incumbent local exchange carriers serving less than 31,000 access lines.

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 July 29, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811066
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1998

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Notice of Application for Suspension or Waiver of Requirements Under P.U.C. Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 30, 1998, for suspension or waiver of the requirements under P.U.C. Substantive Rule §23.103.

Project Title and Number: Application of U.S. Telephone Holding, Inc. d/b/a Sage Telecom for Suspension or Waiver of the Requirements Under P.U.C. Substantive Rule §23.103. Project Number 19552 before the Public Utility Commission of Texas.

The Application: In Project Number 19552, U.S. Telephone Holding, Inc. doing business as Sage Telecom (Sage Telecom) requests suspension or waiver of the requirements of Substantive Rule §23.103 which requires the implementation of intraLATA equal access for Texas telephone customers. Sage Telecom is a small certified telecommunications utility (CTU) serving less than two percent of the nation's subscriber lines and, pursuant to P.U.C. Substantive

Rule §23.103(d)(3) may petition the Public Utility Commission of Texas for a suspension or modification of the requirements of this subsection.

Sage Telecom intends to provide telecommunications services to end users in the territory of Southwestern Bell Telephone Company (SWBT) utilizing unbundled network elements (UNEs) leased from SWBT under a Service Provider Certificate of Operating Authority (SPCOA). Sage Telecom states that since its network will be comprised entirely of UNEs leased from SWBT, the company lacks the technical capability to provide intraLATA equal access to its customers.

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 on or before August 3, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810967
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998



Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on July 6, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Magic Valley Electric Cooperative, Inc. (Magic Valley) to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Willacy County, Docket Number 19577 before the Public Utility Commission of Texas.

The Application: In Docket Number 19577, Magic Valley requests approval to construct approximately 6.5 miles of 138-kV transmission line to be known as the Kenaf 138-kV Transmission Line in Willacy County. The proposed transmission line is being constructed in order for Magic Valley to provide electric service to the proposed Kenaf Industries Plant.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810954
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 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 Lucent Technologies, Inc. - LBJ Freeway in Dallas, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-Custom Service for Lucent Technologies, Inc. - LBJ Freeway in Dallas, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19588.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Lucent Technologies, Inc. - LBJ Freeway in Dallas, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Dallas exchange, and the geographic market for this specific PLEXAR-Custom service is the Dallas 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-9811107
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 1998



Notice of Workshop to Discuss Wholesale Pricing Policies for New/Advanced Technologies/Services

The staff of the Public Utility Commission of Texas will hold a workshop on August 24, 1998, to discuss wholesale pricing policies for New/Advanced Technologies/ Services (NATS), Project Number 19543. The workshop will start at 9:00 a.m. in the Commissioners' Hearing Room on the seventh floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, TX 78701.

By July 27, 1998, staff will file in the commission's Central Records under Project Number 19543, a list of questions to be discussed at the workshop. Interested parties should file responses to the questions on August 6, 1998. Replies to the responses by other parties should be filed by August 13, 1998. All responses to the questions and replies to the responses should be filed in Project Number 19543.

By August 20, 1998, staff will file an agenda and schedule for the workshop.

Persons who plan to attend the August 24, 1998 workshop should register with Teresa Kirk at (512) 936-7249. If there are any questions, please contact Nelson Parish at (512) 936-7257.

TRD-9811108
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 1998



Public Notices of Interconnection Agreement

On June 26, 1998, Advanced Communications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19538. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19538. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired

individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19538.

TRD-9810956
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998



On June 26, 1998, Southwestern Bell Telephone Company and Express Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19539. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19539. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and

establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19539.

TRD-9810955
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998



On July 1, 1998, Southwestern Bell Telephone Company and ADN Enterprises, Inc. doing business as Trinity Telephone, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19550. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19550. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or

- b) is not consistent with the public interest, convenience, and necessity; or
- c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19550.

TRD-9810957
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998



On July 6, 1998, Southwestern Bell Telephone Company and Alternative Telephone Connections, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19576. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19576. As

a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19576.

TRD-9810959
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998



On July 6, 1998, Lufkin-Conroe Telephone Exchange, Inc. and Lonestar Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19574. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality stan-

dards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19574. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19574.

TRD-9810958
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 1998



Texas Real Estate Commission

Correction of Error

The Texas Real Estate Commission adopted an amendment to 22 TAC §535.223. The rule appeared in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6954).

On page 6955, §535.223(e)(2), the text should read "(2) The inspector may use legal sized (8 1/2" x 14") paper."



Sunset Advisory Commission

Correction of Error

The Sunset Advisory Commission submitted an Open Meeting Notice, which appeared in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6742).

The meeting date was incorrectly published as June 1-2, instead of July 1-2.



The University of Texas System

Request for Information (RFI)

The University of Texas System (U.T. System) requests information from law firms interested in representing U.T. System and its health component institutions regarding complex contracting issues related to affiliation agreements with health delivery networks, including contracts with private and public entities. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 1998 to August 31, 1999) a health care panel from which U.T. System, by and through its Office of General Counsel, will select appropriate counsel for representation and advice on legal issues raised by complex healthcare delivery networks.

Description. The U.T. System operates six health institutions located in Houston, Dallas, Galveston, San Antonio, and Tyler, Texas. University physician and hospital services are provided through a broad range of contractual arrangements with health care providers to arrange for medical educational programs. These arrangements may be impacted by state and federal laws and regulations governing relationships between state agencies, governmental units, and private entities. For this purpose, U.T. System will engage outside counsel with experience in establishing complex healthcare delivery networks and complex contracting arrangements. In addition, outside counsel must have a working knowledge of state and federal laws and regulations governing state agencies and the governmental units. U.T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U.T. System's Office of General Counsel.

Responses. Responses to the RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for preparing the legal services, including the firm's prior experience in complex health delivery and reimbursement matters, the names, experience, and expertise of the attorneys who may be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U.T. System's complex health delivery and reimbursement matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U.T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the U.T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information" and addressed to R. Carlton Presley, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (bpresley@utsystem.edu; fax: (512) 499-4523; telephone (512) 499-4462 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U.T. System at the address set forth above no later than 5:00 p.m., Friday, July 31, 1998.

TRD-9811135

Francie A. Frederick

Executive Secretary, Board of Regents

The University of Texas System

Filed: July 15, 1998



Texas Water Development Board

Correction of Error

The Texas Water Development Board adopted amendments to 31 TAC §§363.202, 363.207, and 363.208, repeal of §363.206 and new §363.206 and §363.226. The rules appeared in the July 3, 1998, issue of the *Texas Register* (23 TexReg 7028-7034).

Due to Texas Water Development Board error the adoption preamble which appeared on page 7031, under the heading 31 TAC §363.206, should have appeared on page 7028 under the heading 31 TAC §§363.202, 363.206, 363.207, and 363.208.



Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at: 10:00 a.m., August 25, 1998, Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 on the proposed Fiscal Year (FY) 1999 - 2003 Project Priority List and Fiscal Year 1999 Intended Use Plan for the Clean Water State Revolving Fund (CWSRF). The Project Priority List is an alphabetical listing of wastewater treatment projects which will be eligible for funding during FY 1999 - 2003 through the Clean Water State Revolving Fund program. The Intended Use Plan (IUP) contains a prioritized listing of wastewater treatment projects which will be considered for funding in FY 99 through the Clean Water State Revolving Fund program. The proposed Project Priority List and Intended Use Plan have been prepared pursuant to rules for the Clean Water State Revolving Fund as adopted by the Texas Water Development Board in 31 TAC Chapter 363.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Project Priority List and Intended Use Plan. In addition, persons may participate in the hearing by mailing written comments before the above date to Frank R. Forsyth, Jr., Chief, Grants Administration and Special Reporting, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711. On or about July 24, 1998, copies of the proposed FY 1999 - 2003 Project Priority List and FY 1999 Intended Use Plan will be available in Room 543 of the Stephen F. Austin Building or may be obtained from the Grants Administration and Special Reporting Section, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711, on that date.

The hearing is being conducted pursuant to 31 T.A.C. Chapter 363 (Rules of the Texas Water Development Board) and 40 Code of Federal Regulation, §25.5.

TRD-9811005
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: July 13, 1998

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Texas Workforce Commission

Correction of Error

The Texas Workforce Commission adopted new 40 TAC §§821.1–821.6. The rules appeared in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5732).

The Chapter title was printed as “Texas PayDay Rules” instead of “Texas Payday Rules”.

◆ ◆ ◆

Requests for Proposals

Capacity-Building and Implementation Grants for Local Employer Dependent Care Coalitions:

The Texas Workforce Commission (TWC) invites proposals from organizations for Capacity-Building and Implementation Grants for Local Employer Dependent Care Coalitions. The purpose of the grant is to expand the capacity of local employers and other community partners to assess dependent care needs and to implement strategies to improve dependent care services to working families through a strong local employer coalition.

A. Authorization of Funding.

The funds are authorized by Texas Labor Code, §81.0045 (Vernon’s Ann. Tx. St. 1996).

B. Scope of Work

Grant funds must be used to develop the capacity to build a local employer coalition to improve and expand dependent care services to working families, or to implement projects to improve the quality of local dependent care service delivery.

1. The grantee will work with local business leaders, employers, dependent care providers, and the appropriate Local Workforce Development Board to develop the structure of a local employer coalition, as well as specific dependent care improvement projects.
2. The grantee will organize employer and dependent care provider groups. Each group will plan strategies to improve and expand dependent care services.
3. In its application, the grantee will identify a Local Resource Person to assume training and coalition development activities.
 - a. The Local Resource Person will plan work sessions with employer and provider groups to assess the community dependent care needs of the workforce, to propose an organizational structure for the employer coalition, and to identify first projects.
 - b. A panel of employers, providers and the grantee will select the Local Resource Person.
 - c. The Local Resource Person need not be an employee of the grantee at the time of grant application.

4. The grantee must provide staff support to assess the dependent care needs of the workforce, to propose the organizational structure for the employer coalition, and to identify first projects.

5. Grantees who received Capacity-Building Grants from the Texas Workforce Commission during the prior fiscal year may be required to resubmit competitive proposals for Implementation Grants for Fiscal Year 1999. These grantees will implement organizational structure and projects identified in Fiscal Year 1998.

6. The grantee must describe a plan for ongoing and future support for the employer coalition.

C. Eligible applicants

Applicants for the Capacity-Building and Implementation Grants must meet the following criteria and provide required documentation as requested in the application packet to be considered eligible.

1. Legal entity – any legal entity authorized to do business in Texas is eligible to apply.
2. The applicant must provide letters of support (or memorandums of understanding) from two private sector employers stating their commitment to provide leadership and in-kind support during the grant period. The applicant must also provide a letter of support from the Executive Director of the Local Workforce Development Board stating awareness of the proposal and agreement with the goals of the project.
3. The applicant must demonstrate specific long-term plans to support the employer coalition after the grant funding period ends.

D. Available Funding.

Proposals for capacity building for employer coalitions may request up to \$25,000. TWC anticipates awarding up to eight such grants.

E. Length of contract.

The contract period will begin September 15, 1998, or as soon thereafter as contracts are finalized. The contract period will end on August 31, 1999.

F. Selection, Notification, and Negotiation Process.

TWC anticipates completing the selection process no later than August 28, 1998. Budget and performance statement negotiations will be conducted by TWC in advance of awarding grants. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC has no obligation to award any contracts based on this solicitation.

The deadline for consideration of proposals is 5:00 p.m., August 21, 1998. Mailed proposals must include a legible U.S. Postal Service postmark showing a date and time on or before the deadline. Metered mail is not acceptable unless it also includes an acceptable U.S. Postal Service postmark. Applications delivered by any other type of mail service or hand-delivered must arrive at TWC’s Work and Family Clearinghouse office by the specified date and time. For further information and to order Application Packets, contact the Grants Staff, Texas Work & Family Clearinghouse, 101 E. 15th Street, Room 416T, Austin, TX 78778-0001. Phone (512) 936–3228 or fax (512) 936–3255.

A list of funded organizations will be published in the Texas Register following contract finalization.

TRD-9811125
J. Randell (Jerry) Hill

General Counsel
Texas Workforce Commission
Filed: July 15, 1998



The Texas Workforce Commission (Commission) is providing the following information regarding a request for proposals for the Job Training Partnership Act (JTPA) Title III Rapid Response Services. The emphasis of this RFP is to identify contingency service providers for Title III Rapid Response Services pursuant to JTPA §314(b).

The Commission is under no legal requirement to execute a resulting contract on the basis of making this Request for Proposals. The information provided herein serves only as a means of identifying the various contractor alternatives and estimates of costs for the services requested by the Commission.

B. Eligible Bidders.

Eligible Bidders are private for profit, non-profit organizations, institutions of higher education, and individuals as appropriate for the project. Historically Underutilized Businesses (HUBs) are encouraged to submit a proposal.

C. Available Funding.

The amount of funding available for rapid response services may vary depending on the specific layoff or closure. This RFP does not commit the Commission to pay for any cost incurred prior to execution of a contract, or prior to fund availability from the U.S. Department of Labor.

D. Funding Restrictions.

Funds must be used only for program activities approved by the Commission. Funds must not be used to supplant other funding or used to duplicate services. Permission must be secured from the Commission before changes can be made in activities performed.

E. Selection, Notification, and Negotiation Process.

All proposals will be evaluated on a competitive basis. The Commission anticipates completing the selection process no later than October

31, 1998. Bidders selected as contingency vendors will be notified immediately after the selection process is completed. The Commission reserves the right to vary any provisions of this RFP prior to the execution of a contract.

F. Length of Contract.

A resulting contract may be executed for a period ranging from three months to twelve months. The contract period may vary, depending on the size and scope of the layoff or closure. At the time of a layoff or closure, successful Bidders in the local area will be notified and asked to submit, within five calendar days, cost quotations for the provision of services for the specific layoff or closure.

G. Agency Contact and Due Date.

To request a proposal packet please contact: Janie Young at (512) 936-0469. You may also request a packet by writing to Ms. Young at the Texas Workforce Commission, Workforce Development Division, 101 East 15th Street, Room 144T Austin, Texas 78778-0001. Proposals will be due on August 31, 1998, 4:00 p.m. (CST), at the aforementioned address.

H. Bidder's Conference.

The Commission will hold a bidder's conference on August 6, 1998, at 9:00 am through 11:00 am, in the Trinity Building, 1117 Trinity, Room 304T (A-Side).

A list of selected vendors will be published in the Texas Register following the selection process.

TRD-9811126
J. Randell (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: July 15, 1998



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