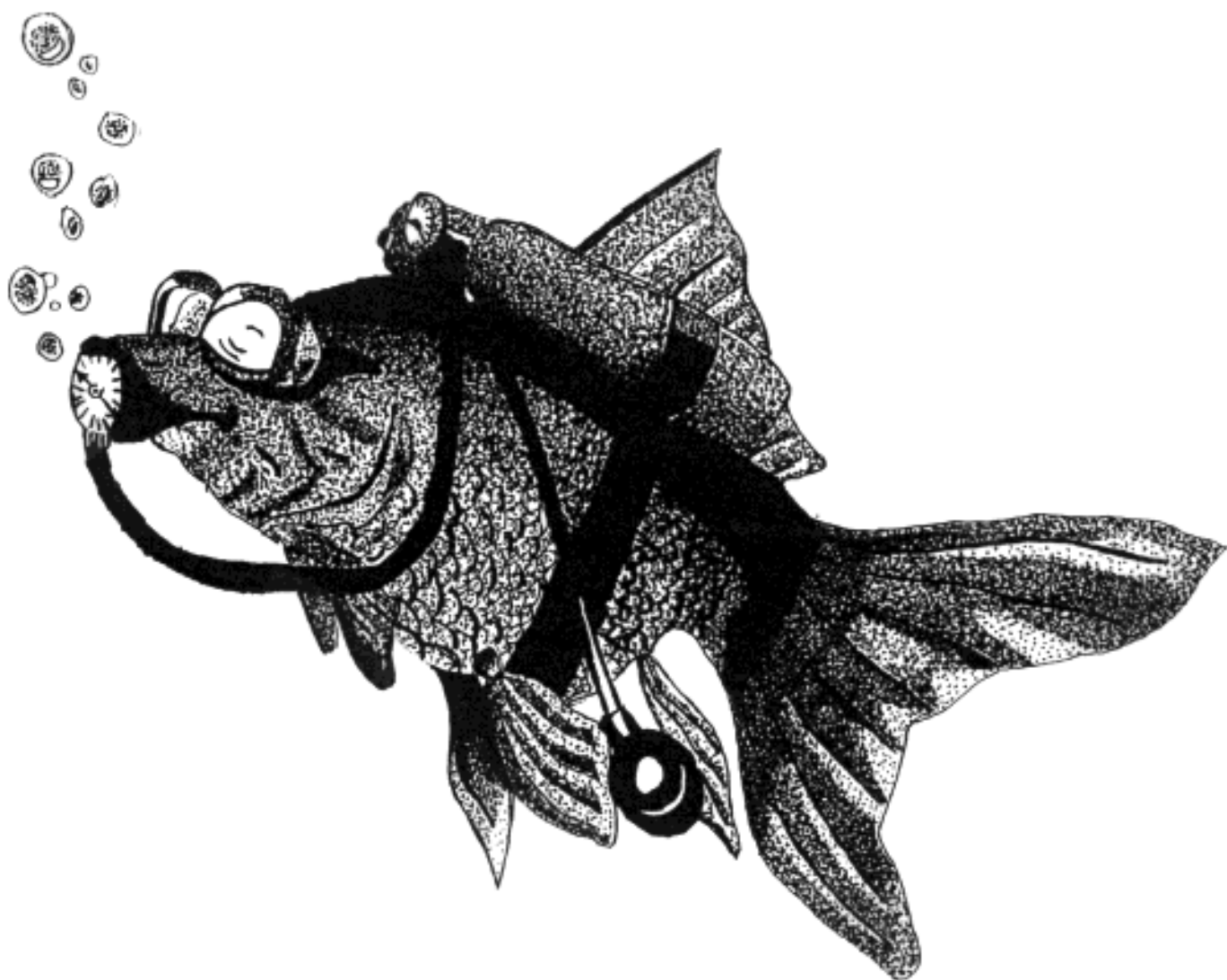


# TEXAS REGISTER

*Volume 23 Number 31 July 31, 1998*

*Pages 7663-7938*

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***This month's front cover artwork:***

***Artist: Stefanie Crane***

***10th Grade***

***Sanger High School***

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# THE GOVERNOR

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

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## Office of the Governor

### Appointments made July 9, 1998

To be appointed to the UNIVERSITY OF NORTH TEXAS BOARD OF REGENTS for a term to expire May 22, 1999: Roy Gene Evans, 3301 St. Johns, Dallas, Texas 75205. Mr. Evans will be filling the unexpired term of Topsy Wright of Grand Prairie who is deceased.

To be appointed to the TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS for a term to expire February 1, 2001: Waymon Ray Hinson, Ph.D., 810 Canyon Court, Abilene, Texas 79601. Mr. Hinson will be filling the unexpired term of Anna Beth Benningfield of Dallas who resigned.

To be appointed to the COUNCIL ON SEX OFFENDER TREATMENT pursuant to House Bill No. 2699, 75th Legislature, Regular Session: For a term to expire 2-1-99: Kristy M. Carr, 5604 Southwest Parkway 2231, Austin, Texas 78735; For a term to expire 2-1-01: Officer David Swinson, Jr., P.O. Box 97, Hewitt, Texas 76643; For a term to expire 2-1-03: Liles Arnold, 3720 Chaparral Road, Plano, Texas 75074.

### Appointments made July 10, 1998

To be appointed as members of the PSYCHOLOGICAL ASSOCIATE ADVISORY COMMITTEE: For a term to expire 2-1-99: Walter Ray Allberg, Ph.D., 1820 Arnold Palmer Drive, El Paso, Texas 79935 (will be filling the unexpired term of Dr. John Batrus of Dallas who resigned); For a term to expire 2-1-01: Sandra L. Clark,

3913 Lynn crest Drive, Fort Worth, Texas 76109 (will be filling the unexpired term of William H. Clark of Austin who resigned.)

To be appointed to the SOUTHERN REGIONAL EDUCATIONAL BOARD for a term to expire June 30, 2002: Dr. Roderick R. Paige, Superintendent of Schools, Houston Independent school District, 3830 Richmond Avenue, Houston, Texas 77027. Dr. Paige will be replacing Rene Nunez of El Paso whose term expired.

To be appointed as BRANCH PILOT FOR THE MATAGORDA BAY SHIP CHANNEL for a term to expire July 13, 2002: Captain Larry W. Robinson, Matagorda bay Pilots Association, P.O. Box 836, Port Lavaca, Texas 77979. Captain Robinson is being reappointed.

To be appointed as BRANCH PILOT FOR THE BRAZOS SANTIAGO PASS, BAR, AND TRIBUTARIES, CAMERON COUNTY, for a term to expire May 31, 2002: Captain E. M. Stovall III, Brazos-Santiago Pilots Association, P.O. Box 549, Port Isabel, Texas 78578. Captain Stovall has been approved for an original commission by the Board of Pilots Commission for the Port Isabel-San Benito Navigation District.

To be designated Claire Johnson of Abilene as chair of the Texas Council of Workforce and Economic Competitiveness for a term at the pleasure of the Governor. Ms. Johnson will be replacing Rolando Cordobes of Dallas as chair. Mr. Cordobes will continue to serve on the Council.

TRD-9811590



# 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.

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Letter of Opinions

**LO 98-051 (RQ-1084).**The Honorable Eddie Lucio, Chair, Intergovernmental Relations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the mayor or the city manager of the City of Brownsville may remove a municipal housing authority commissioner.

**SUMMARY** It is for the city commission of the City of Brownsville to determine, consistent with its city charter provisions, whether the mayor or the city manager is authorized to remove a public housing commissioner.

**LO 98-052 (RQ-1033).** The Honorable Pete P. Gallego, Chair, Committee on General Investigating, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a Dallas City Council member whose spouse is employed by American Airlines may participate in matters involving the use of Love Field.

**SUMMARY** A Dallas City Council member whose spouse has a substantial interest in American Airlines under chapter 171 of the Local Government Code is also deemed to have a "substantial interest" in American Airlines. It is a fact question whether particular actions by the Dallas City Council with respect to Love Field would have a special economic effect on American Airlines distinguishable from the effect on the public. However, the city council member would be well-advised to err on the side of avoiding conflicts of interest and recuse herself from city council actions affecting matters on which American Airlines has taken a stand in litigation against the City of Dallas, as well as other matters that would have a special economic effect on American Airlines distinguishable from the effect on the public.

TRD-9811518



Request for Opinions

**RQ-1158.** Request from the Honorable Marcus D. Taylor, Wood County Criminal District Attorney, P.O. Box 689, Quitman, Texas 75783, concerning whether a member of the Wood County Industrial Commission may receive reimbursement for expenses incurred at a bed-and-breakfast owned by another member of the Commission.

**RQ-1159.** Request from the Honorable Alberto R. Gonzales, Secretary of State, Office of the Secretary of State, Executive Division, P.O. Box 12697, Austin, Texas 78711-2697, concerning whether a business corporation may convert to a non-profit corporation under the provisions of article 5.17, Texas Business Corporation Act, and related questions.

**RQ-1160.** Request from the Honorable Judith Zaffirini, Chair, Health and Human Services Committee, Texas Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Laredo Police Department may purchase vehicles using funds forfeited from seizures of contraband.

**RQ-1161.** Request from the Honorable Kim Brimer, Chair, Business and Industry Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning construction of the Contest and Gift Giveaway Act, Finance Code, Chapter 40.

TRD-9811519



# TEXAS ETHICS COMMISSION

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

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

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Advisory Opinion Request

**AOR-440.** Closed. Withdrawn by requestor.

TRD-9811155

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: July 15, 1998



Ethics Advisory Opinions

**EAO-398 (AOR-436).** Whether a corporation would be making a prohibited political contribution if the corporation sold a product to a candidate for campaign use at a rate lower than the corporation's normal wholesale rate.

**SUMMARY** To avoid the prohibition on corporate campaign contributions it is critical that the terms of a contract between a corporation and a candidate be typical of the terms the corporation offers to political and non-political customers.

**EAO-399 (AOR-437).** Whether an individual who lost a primary election for the office of district court judge may donate surplus campaign contributions to a candidate for a nonjudicial office.

**SUMMARY** An individual is a candidate as long as the individual has a campaign treasurer appointment on file. An individual who has

filed a final report (and has not reappointed a campaign treasurer) is not a candidate.

Election Code section 253.1611 does not apply to a former judicial candidate.

**EAO-400 (AOR-438).** Whether a candidate's use of personal funds to make payments on a campaign loan constitutes a political expenditure from the candidate's personal funds for purposes of §253.042(a), Election Code.

**SUMMARY** A candidate who uses personal funds to make payments on a campaign loan is making a political expenditure from personal funds. This means that a candidate who properly reports such payments may use political contributions to reimburse himself for the payments, subject to any applicable limit on reimbursement.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-9811215

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: July 16, 1998

# PROPOSED RULES

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

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

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## TITLE 1. ADMINISTRATION

### Part III. Office of the Attorney General

#### Chapter 55. Child Support Enforcement

##### Subchapter F. Collections and Distributions

###### 1 TAC §55.140

*(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 Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Office of the Attorney General proposes the repeal of §55.140, concerning child support enforcement because it will be replaced by a new 1 TAC §55.140 and §55.141, which will include additional provisions relating to disputing the distribution of child support collections.

David Vela, IV-D Director, Child Support Division, has determined that for the first five- year period this repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Vela also has determined that for each year of the first five years this repeal is in effect the public benefit anticipated as a result of the repeal of the section as proposed will be the elimination of a duplicative section. 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 may be submitted to Tod L. Adamson, Child Support Division, Administrative Law Section, Office of the Attorney General, 5500 East Oltorf, Room 355, Austin, Texas 78741, or P.O. Box 12017, mailcode 073, Austin, Texas 78711-2017, (512) 460-6000.

The repeal of this section is proposed under the Family Code, Section 231.002 and the Government Code, Section 2107.002.

The Family Code, Chapter 231, is affected by the repealed section.

§55.140. *Contesting Distribution of Collections on Child Support Obligations Applied to Unreimbursed Public Assistance Payments.*

This 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 20, 1998.

TRD-9811420

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: August 30, 1998

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



###### 1 TAC §55.140, §55.141

The Office of the Attorney General proposes a new §55.140, relating to the collection of money distributed by the Child Support Division from the custodial parent or other person entitled to receive the support when the collection is reversed after it has been distributed, and a new §55.141 providing custodial parents and others affected by §55.140 the opportunity for a hearing to contest the action by the agency.

David Vela, IV-D Director, Child Support Division, has determined that for the first five- year period these sections are in effect the State will realize net savings/cost avoidance of \$14,145,620.

Mr. Vela also has determined that the public benefit anticipated as a result of enforcing the sections is the efficient collection of sums owed to the State. The Texas IV-D program is required to distribute child support collected within federal time frames. It does this by issuing a State Warrant in the amount of the collection it has made. When a collection is reversed, because of the dishonor of a check, the adjustment of the collection by the IRS, a posting error, or otherwise, it creates a debt owed by the recipient of the State Warrant to the State which the Office of the Attorney General has an obligation to collect. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.



A public hearing on this regulation will be held on August 14, 1998 at 1:30 p.m., at the William P. Clements Building, 300 W. 15th Street, Austin, Texas 78701, in Committee Room 5. Written comments may be submitted to Tod L. Adamson, Child Support Division, Administrative Law Section, Office of the Attorney General, 5500 East Oltorf, Room 355, Austin, Texas 78741, or P.O. Box 12017, mailcode 073, Austin, Texas 78711-2017, (512) 460-6000.

The new sections are proposed under the Family Code, Section 231.002 and the Government Code, Section 2107.002.

The Family Code, Chapter 231, is affected by the new rules.

§55.140. Recoupment of Collections Reversed after Distribution.

(a) By receiving and negotiating a warrant for child support from the State of Texas, all custodial parents or other persons entitled to receive child support consent to the Office of the Attorney General's policy for recovering payments which have been reversed after they have been disbursed.

(b) Any person receiving Child Support Collection services from the Office of the Attorney General, who receives and negotiates a State Warrant for child support, must repay the amount of that warrant if the Office of the Attorney General subsequently notifies them that the collection has been reversed. Full payment must be received within 30 days of the Office of the Attorney General sending notice of the reversal. Failure to make timely payment will result in all future child support collections being withheld and applied to the debt until it is fully satisfied.

§55.141. Contesting Distribution of Collections on Child Support Obligations.

(a) A custodial parent or other person entitled to receive child support;

(1) whose family has received public assistance under the Texas Human Resources Code, Chapter 31, may contest the amounts withheld from collections on child support obligations and retained by the State to be applied to unreimbursed assistance to the family; or

(2) may contest the amounts retained from collections on child support obligations and recouped by the State to offset payments improperly disbursed to a custodial parent or other person entitled to receive child support.

(b) When notified of a contest, the Office of the Attorney General shall provide a report showing the support collected on the obligation, how the collection was allocated between the contestant and the State, and the basis for that allocation. This report is not required if the contestant has previously received a monthly notice of collection report from the Office of the Attorney General covering the same time period. The Office of the Attorney General shall provide a form for requesting an administrative hearing to the contestant with the report or upon request.

(c) A hearing shall be conducted by the Office of the Attorney General upon the contestant's submission of a completed request for administrative review form. The request for administrative review must be submitted in writing no later than 30 days after the date that the report in subsection (b) was prepared for the contestant. If the dispute is resolved informally before the hearing, the formal request shall be dismissed.

(d) The custodial parent may participate in the hearing, with or without a licensed representative. The custodial parent may submit any contentions and evidence in the form of an affidavit properly

acknowledged, thereby making his or her participation in the hearing unnecessary.

(e) The request for hearing shall be in the form that follows: Figure 1 TAC §55.141(e)

This 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 20, 1998.

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Sarah Shirley

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## Subchapter I. State Directory of New Hires

### 1 TAC §§55.301-55.308

The Office of the Attorney General proposes new Subchapter I, §§55.301-55.308, concerning Employer New Hire Reporting to the State Directory of New Hires. This new subchapter establishes the procedures for reporting employee information to the State Directory of New Hires meeting the requirements of federal law at §313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and §453A of the Social Security Act (42 U.S.C. §653A).

David Vela, IV-D Director, Child Support Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing these rules.

Mr. Vela also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the efficient location of absent parents who owe child support for the efficient establishment and collection of child support, and the prevention of fraud in the welfare, workers' compensation, and unemployment insurance programs. Furthermore, Mark Hughes, Director of Labor Market Information for the Texas Workforce Commission, has determined that the rules as proposed will have no significant overall impact upon employment conditions in the state. There will be no effect on small businesses, and no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments may be submitted to Patricia Matthews, Child Support Division, Office of the Attorney General, 5500 East Oltorf, Austin, Texas 78741, or P.O. Box 12017, mailcode 046, Austin, Texas 78711-2017, (512) 460-6353.

The new rules are proposed under the Family Code §234.104 which provides the Office of the Attorney General with the authority to establish by rule procedures for reporting employee information and for operating a state directory of new hires meeting the requirements of federal law at §313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and §453A of the Social Security Act (42 U.S.C. §653A).

Chapters 231 and 234 of the Family Code are affected by this new subchapter.

§55.301. Scope.

Section 453A of the Social Security Act, found at 42 U.S.C. §653A, as amended by Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires each state to establish and maintain a State Directory of New Hires to provide a means for employers to assist in the state's efforts to prevent fraud in the welfare, workers' compensation, unemployment insurance programs, and locate and/or collect from absent parents who owe child support by reporting information concerning newly hired and rehired employees directly to a centralized state database. This subchapter establishes within the Office of the Attorney General (Title IV-D agency) a centralized employee registry called the State Directory of New Hires and establishes procedures for employers to report employee information to the state directory of new hires pursuant to chapter 234, subchapter B of the Texas Family Code.

§55.302. Definitions.

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

(1) Common paymaster- has the meaning as described in IRS Rev. Proc. 70-6, 1970-1

(2) New hire- The term new hire shall have the meaning of any employee required to be reported to the state directory of new hires under 453A of the Social Security Act within twenty days of the employees first day on the job.

(3) Date of hire- The date of hire for a new employee is considered to be the first day services are performed for wages by an individual.

(4) Employee- the term employee means an individual who is an employee as defined in Chapter 24 of the Internal Revenue Code of 1986; and does not include an employee of a federal or state agency performing counter intelligence functions, if the head of such agency has determined that reporting pursuant to section 453A of the Social Security Act with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission. Chapter 24 of the IRC and the regulations promulgated thereunder define an "employee" as every individual performing services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee (see IRC section 3401(c) and 26 CFR 31.3401(c)-1). Generally, the legal relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished, but also as to the details and means by which that result is to be accomplished.

(5) Employer- In General. The term employer has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization. At a minimum, in any case where an employer is required to give an employee a Form W-2 showing the amount of taxes withheld, the employer must meet the new hire reporting requirements. Section 3401(d) goes on to provide in part that "if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term employer' means the person having control of the payment of such wages." Thus, every entity (including governmental entities and labor organizations) is an employer if the entity exercises or has the right to exercise control and direction over an individual who performs or has performed any service for the entity unless the entity does not have control of the payment of the employee's wages. In these cases, the entity having control of the payment of such wages is

the "employer." All entities satisfying 3401 (d) of the IRC must meet the new hire reporting requirements set forth in section 453(b)(1) of the Social Security Act, as amended.

(6) Illegible record- A record containing indecipherable writing or print.

(7) Incomplete record- A record that does not contain all six required data elements (employee name, address, social security number and employer name, address and federal identification number).

(8) Labor organization- The term labor organization shall have the meaning given such term in section 2(5) of the National Labor Relations Act, and includes any entity (also known as Hiring Hall) which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of such Act of an agreement between the organization and the employer.

(9) Payroll reporting agent- Has the meaning as described in IRS Rev. Proc. 70-6, 9170-1, C.B.420.

§55.303. New Hire Reporting Requirements.

(a) Except as provided in §§55.304 – 55.306 of this title (relating to Common Paymaster, Multi-State Employers, and Federal Government Employers), each Texas employer shall furnish to the State Directory of New Hires in the state in which a newly hired employee works a report of all new hires that contains the following six required data elements found on the employee's W-4 form:

- (1) the employee name,
- (2) the employee address,
- (3) the employee social security number,
- (4) the employer name,
- (5) the employer address, and
- (6) the Federal Employer Identification Number (FEIN).

(b) Employers, at their option may also provide the following additional information in the report:

- (1) the employee's date of hire,
- (2) the employee's date of birth, and
- (3) the employee's expected salary or wages,
- (4) Employer payroll address for mailing of notice to withhold child support.

(c) All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, electronically or magnetic media as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hardcopy to adopt the new Hire Reporting Form supplied by the IV-D agency.

(1) Formats available to employers include:

(A) Fully and accurately completed copy of the new employee's W-4 form with all mandatory information, as specified by New Hire Reporting requirements, typed or written using large, capitalized lettering (cursive writing is not permitted);

(B) New Hire Report Form supplied by the IV-D agency;

Figure: 1 TAC §55.303(c)(1)(B)

- (C) Existing employer report or printout;
- (D) Magnetic tape or cartridge (see Electronic Reporting Specification Table);
- (E) Diskette (see Electronic Reporting Specification Table);
- (F) E-mail (see Electronic Reporting Specification Table);
- (G) Facsimile; or
- (H) Any other means authorized by the Title IV-D agency for conveying information which includes electronic transmission or delivery of data tapes.

(2) All printed lists must be provided in 10 point font, or larger.

(3) All new hire reports submitted using diskette, magnetic tape, magnetic cartridge, or e-mail must be provided in accordance with the following New Hire reporting specifications for electronic reporting:

Figure: 1 TAC §55.303(c)(3)

(4) All new hire reports submitted using e-mail must be provided as an "e-mail attachment." All employers reporting via e-mail must use the following submission e-mail address for transmitting new hire reports electronically via e-mail: txhires@flash.net. Employers who wish to correspond with the Texas New Hire Operations Center for questions, technical assistance or problems, may use the following correspondence e-mail address: txenh@flash.net.

(d) To ensure timely receipt of information, Texas employers shall be required to report the hiring or rehiring of persons to the Title IV-D agency. New Hire reports shall be considered timely if postmarked by the due date or if filed electronically, upon receipt by the agency. New Hire reports are due:

(1) not later than the twenty calendar days after the date the employer hires the employee; or

(2) in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

(e) Employers shall send reports for newly hired or rehired employees to Texas Employer New Hire Reporting Operations Center, Post Office Box 149224, Austin, Texas 78714-9224 Telephone Number : 1-888-839-4473 Fax Number: 1-800-732-5015

(f) Questions regarding the Employer New Hire Program should be directed to the Texas Employer New Hire Reporting Operations Center at 1-888-TEX-Hire (1-888-839-4473) or access Texas New Hire Reporting on the World wide Web Home Page. The Internet address is: <http://www.TexasNewHire.state.tx.us>

(g) Each employer submitting an incomplete or illegible report, upon request, shall resubmit the incomplete or illegible data within 10 days after receiving notice.

§55.304. Common Paymaster.

A report filed by the common paymaster or payroll reporting agent of an employer is sufficient to meet the new hire reporting requirements for each of the related employees for which the common paymaster or payroll reporting agent provides new hire information.

§55.305. Multi-State Employers.

(a) An employer that has employees who are employed in Texas and one or more other states may choose to report to a state other than Texas provided the employer designates only one state in

which such employer has employees; transmits the required reports using magnetic or electronic media authorized by the Title IV-D agency for conveying information; and notifies the Secretary of Health and Human services, in writing, prior to reporting.

(b) When submitting written notification to the Secretary about the designation of the single State for new hire reporting, an employer should include the following information:

- (1) Federal Employer Identification Number (FEIN),
- (2) Employer's name, address, telephone number related to the FEIN,
- (3) State selected for reporting purposes,
- (4) Other States in which the company has employees,
- (5) Corporate point of contact.

(c) If the company will be reporting new hires on behalf of subsidiaries who operate under different names and FEINs, the employer should also list the names, FEINs and states where they have employees working.

(d) An employer can notify the Secretary of the Department of Health and Human Services in one of three ways:

(1) Notify the Secretary in writing at the following address: Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement Multi State Employer Registration, P.O. Box 509, Randallstown, MD 21133;

(2) Notify the Secretary in writing by facsimile: Department of Health and Human Services Administration for children and Families, Office of child Support Enforcement, Multistate Employer Notification, 1-410-277-9325; or

(3) Notify the Secretary via the Internet by accessing the Multistate Employer option on the OCSE World Wide Web home Page. The Internet address is: <http://www.acf.dhhs.gov/programs/cse/newhire/index.html>.

§55.306. Federal Government Employers.

Any department, agency, or instrumentality of the United States must report directly to the National Directory of New Hires established pursuant to both sections 313(b) of PRWORA and 453A of the Social Security Act.

§55.307. Civil Money Penalties on Noncomplying Employers.

The Title IV-D agency may assess a \$500 penalty against a noncomplying employer if the failure to report information required by these rules and federal regulations is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

§55.308. Confidentiality And Security.

(a) Confidentiality of Records. The records contained in the new hire directory shall be confidential and may be accessed for the following purposes only:

(1) Location of Child Support Obligors. The Title IV-D Agency shall use the Employer New Hire Reporting (ENHR) information to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the agency to carry out such purposes.

(2) Verification of Eligibility for Certain Programs. A State agency responsible for administering a program specified

in section 1137(b) of the Social Security Act shall have access to information reported by employers for purposes of verifying eligibility for the program.

(3) Administration of Employment Security and Workers' Compensation. State agencies operating employment security (the Texas Workforce Commission) and workers' compensation (the Texas Workers' Compensation Commission) programs shall have access to ENHR information reported by employers for the purposes of administering such programs.

(b) Security. The State IV-D agency shall have in effect safeguards on the integrity, accuracy and completeness of , access to, and use of data in the automated system required by 453A of the Social Security Act.

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

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

TRD-9810980

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: August 30, 1998

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



## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 5. Fuel Quality

##### 4 TAC §§5.1-5.5

The Texas Department of Agriculture (the department) proposes new §§5.1-5.5, concerning automotive fuel quality rating and monitoring. The new sections are proposed to implement an automotive fuel quality monitoring program authorized under Article 8614, Vernon's Texas Civil Statutes (1997) as amended by Senate Bill 665, 75th Legislature, 1997. Proposed §5.1 defines terms used in these regulations. Proposed §5.2 specifies an expiration provision for Chapter 5. Proposed §5.3 requires the automotive fuel rating of gasoline to be the same or higher than the automotive fuel rating posted on the dispenser and certified by the distributor or supplier. Also, §5.3 establishes testing methods, standards and specifications utilized in the determination of the automotive fuel rating. Proposed §5.4 provides for submission of records to the department. Proposed §5.5 establishes equipment requirements for distributors, suppliers and dealers of gasoline to aid the department in the inspection and investigation of automotive fuel ratings.

Damon Slaydon, Deputy Director for Consumer and Commodity Programs, has determined that for the first five-year period the proposed new sections are in effect, there will be no fiscal implications for state government as a result of administering and enforcing the sections. Article 8614 provides that the costs of the program will be funded by a statutorily required fee paid to the state comptroller by distributors, suppliers, wholesalers and jobbers who deal in motor fuel. There will be no fiscal implications for local government.

Mr. Slaydon also has determined that for each of the first five years the sections are in effect, the public benefit anticipated as

a result of enforcing the sections will be that a greater amount of gasoline will be sold that is properly labeled. The effect on small and large businesses and the anticipated economic cost to those who are required to comply with the sections as proposed will be minimal because federal regulations currently in place require that the majority of information and equipment required by the new sections be maintained. There will be no effect on retailers over the five-year period, except where administrative penalties are imposed for violations.

Comments may be submitted to Damon Slaydon, Deputy Director for Consumer and Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication in the *Texas Register*.

The new sections are proposed under Article 8614, Vernon's Texas Civil Statutes (1997), as amended by Senate Bill 665, 75th Legislature, 1997 which provides the Texas Department of Agriculture with the authority to adopt rules to regulate the distributors, suppliers and dealers who sell motor fuel within the state.

The statute affected by this proposal is Article 8614, Vernon's Texas Civil Statutes (1997).

##### §5.1. Definitions.

In addition to the definitions set out in Article 8614, Vernon's Texas Civil Statutes (1997), as amended by Senate Bill 665, 75th Legislature, 1997, and the standards set by the American Society for Testing and Materials (ASTM), the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) ASTM—The American Society for Testing and Materials; the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems and services and the promotion of related knowledge.

(2) Department—Texas Department of Agriculture

(3) Gasoline—That term as defined in §153.001 of the Texas Tax Code Annotated (Vernon 1992).

##### §5.2. Expiration Provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated, §§2001.021-2001.038 (Vernon 1997) or specific reactivation by the department, all of the sections in this chapter shall expire August 31, 2002.

##### §5.3. Automotive Fuel Rating.

(a) The automotive fuel rating of gasoline sold or offered for sale from a motor fuel dispenser shall not be less than the automotive fuel rating posted on the dispenser.

(b) The automotive fuel rating of gasoline delivered or transferred by a distributor or a supplier to a motor fuel dealer in this state shall be no less than the automotive fuel rating stated in the certification provided by the distributor or supplier to the dealer pursuant to federal law, 16 Code of Federal Regulations Part 306.

(c) The testing methods, standards and specifications employed by the department to determine the automotive fuel rating of gasoline shall be those prescribed by the ASTM D-2699, ASTM D-2700, and ASTM D-5599, as applicable. Copies of the ASTM testing standards may be obtained by writing the American Society for Testing and Materials at 1916 Race Street, Philadelphia, PA 19103.

(d) For purposes of the assessment of administrative or civil penalties for violations of subsection (a) of this section, each incorrect posting of an automotive fuel rating on a motor fuel dispenser shall be considered a separate violation.

§ 5.4. Records.

In addition to the right of inspection, the department may require that any records or other documents required to be maintained under Article 8614, Vernon's Texas Civil Statutes (1997) be submitted to the department upon request.

§5.5. Inspections.

The fill pipe box cover for any automotive fuel storage tank or vessel supplying gasoline shall be permanently, plainly, and visibly marked in such a manner as to identify what type of gasoline each storage tank delivers to a particular motor fuel dispenser. For example, the markings may include the words, or abbreviation of the words, regular unleaded, unleaded plus, super unleaded, or a related color code scheme, such as white, blue and red. If the fill pipe box covers are marked by means of a color code scheme, a color code legend shall be conspicuously displayed at the place of business.

This 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 20, 1998.

TRD-9811423

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 30, 1998

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

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**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

**Chapter 3. Oil and Gas Division**

**16 TAC §3.28**

The Railroad Commission of Texas proposes an amendment to §3.28, relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported. The commission proposes the amendments in order to exempt certain wells from testing, which will reduce the regulatory burden on industry without compromising the integrity of commission records.

The proposed amendments revise the language in §3.28 to eliminate testing requirements for non-commingled wells with deliverabilities greater than 100 and less than 250 MCF a day in all types of gas fields with no special rules.

Rita E. Percival, Oil and Gas Division planner, has determined that for each year of the first five years the rule as proposed will be in effect, the fiscal implications as a result of enforcing or administering the amended rule will be a net cost to the state of \$10,834 in fiscal year 1998, resulting in a savings of \$620 annually thereafter. In fiscal year 1998, forms revision will cost \$874 and computer reprogramming \$10,580. An annual savings of \$620 is based on reduced keyentry requirements.

Currently 816 wells would be exempt from semi-annual testing under the proposed revisions. Because multiple wells scheduled for testing within a county are listed on a Form G-10, the

effect of this proposed exemption on the number of G-10 test report forms will be minimal. There will, however, be fewer records (each well's line of data is considered a "record") to be keyentered from the G-10 reports by commission staff. At \$0.38 keyentry cost per individual record, the annual savings in key entry is estimated at a maximum of \$620 (\$0.38/record X 816 records x 2 tests a year).

There will be no effect on local government.

There will be a potential savings to operators of the gas wells (those producing more than 100 but less than 250 Mcf/day in fields without special rules) that will no longer be required to report semi-annual tests. There will be no cost of compliance with the proposed rule amendment for the affected operators but there will be a potential savings to operators of gas wells for which semi-annual tests are no longer required. A small producer having a lower overhead may experience a greater relative savings than a larger producer with a higher overhead.

Producers of eligible wells will save an estimated \$1,000 annually if they no longer test those wells (two tests at an average of \$500 each). Actual test costs may vary from \$200 for a well in the Panhandle fields to as high as \$5,000 per well for a high-pressure, high-volume well where an operator opts for 24-hour supervision of the test. However, depending on the reservoir in question, an operator may choose to test a well whether or not the commission requires a test. Consequently, there will not necessarily be a one-to-one relationship between the number of wells eligible for exemption and the number of wells not being tested.

While the producer may save the cost of a foregone test, the well servicing company which would ordinarily have conducted the test will experience a lower demand for its services. For the average well test foregone by an operator who contracts out for testing, there will be an estimated reduction of \$500 income for the well servicing contractor.

Daniel W. Ortman, hearings examiner, Office of General Counsel, has determined that, for each year that the amendments are in effect, the public benefit anticipated as a result of adopting the amendments will be the economic benefit associated with reduced reporting to the commission and the lowered cost of recording the periodic testing of wells.

The commission has not requested a local employment impact statement, pursuant to Texas Government Code, §2001.022(h).

Comments may be submitted to Richard A. Varela, Assistant Director, Permitting/Production Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The commission has determined that a 15 day comment period is reasonable due to the potential cost saving to operators. Comments will be accepted for 15 days after publication in the *Texas Register*. All comments should refer to Oil and Gas Docket Number 20-0219105. For further information, please call Richard A. Varela at (512) 463-6838.

The commission proposes the amendments pursuant to Texas Natural Resources Code §§85.042(b), 85.202(b), 86.041, 86.042(1) which authorize the commission to prevent waste of oil and gas and to protect correlative rights.

The Texas Natural Resources Code §§86.141, 86.142, 86.143 and 86.144 are affected by the proposed amendments.

§3.28. *Potential and Deliverability of Gas Wells To Be Ascertained and Reported.*

(a) (No change.)

(b) After conducting the test required by subsection (a) of this section each operator of a gas well shall conduct an initial deliverability test not later than 10 days after the start of production for one or more legal purposes and shall report such initial deliverability test on the prescribed form. If a 72-hour one-point back pressure test on a well connected to a sales line was conducted as provided in subsection (a) of this section, the same test may be used to determine initial deliverability, provided the test was conducted in accordance with subsection (c) of this section. After the initial deliverability test has been conducted, the following schedule for well testing applies. Nonassociated gas wells shall be tested semiannually. Associated 49(b) gas wells shall be tested annually. Wells with current reported deliverability of 100 Mcf a day or less are not required to test as long as deliverability and production remain at or below 100 Mcf a day but are required to file Form G-10 according to the instructions on the form. Wells with a deliverability greater than 100 Mcf a day and less than or equal to 250 Mcf a day in fields without special field rules are not required to be tested as long as deliverability and production remain equal to or less than 250 Mcf a day. Wells operating under special field rules which conflict with this subsection shall test in accordance with the special field rules. Notwithstanding the above provisions on frequency of testing, gas wells commingling liquid hydrocarbons before metering must comply with the testing provisions applicable to such wells. All deliverability tests shall be conducted in accordance with subsection (c) of this section and the instructions printed on the Form G-10. The results of each test shall be attested to by the operator or his appointed agent. The first purchaser or its representative upon request to the operator shall have the right to witness such tests. Gas meter charts, printouts, or other documents showing the actual measurement of the gas produced or other data required to be recorded during any deliverability test conducted under this subsection shall be preserved as required by §3.1 of this title (relating to Organization Name To Be Filed and Records To Be Kept) (Statewide Rule 1). In the event that the first purchaser and the operator cannot agree upon the validity of the test results, then either party may request a retest of the well. The first purchaser upon request to the operator shall have the right to witness the retest. If either party requests a representative from the commission to witness a retest of the well, the results of a commission-witnessed test shall be conclusive for the purposes of this section until the next regularly scheduled test of the well. In the event a retest is witnessed by the commission, the retest shall be signed by the representative of the commission. In the event that downhole remedial work or other substantial production enhancement work is performed, or if a pumping unit, compressor, or other equipment is installed to increase deliverability of a well subject to the commission-witnessed testing procedure described in this subsection, a new test may be requested and shall be performed according to the procedure outlined in this subsection.

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

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

Filed with the Office of the Secretary of State on July 17, 1998.

TRD-9811283

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 30, 1998

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

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**16 TAC §3.107**

The Railroad Commission of Texas proposes new §3.107, concerning the Texas Experimental Research and Recovery Activity Program (TERRA). The proposed new rule implements statutory provisions in Texas Natural Resources Code, Chapter 93, enacted by the 74th legislature and effective January 1, 1996, for placement of oil or gas wells in the TERRA program, monitoring of TERRA wells, licensing of TERRA wells for research or production tests, and the plugging of TERRA wells. The proposed new rule also provides standards for estimating the cost of plugging TERRA wells. Participation in the TERRA program will be voluntary.

Robert E. (Bobby) Heith, deputy assistant director of Well Plugging/TERRA, Oil and Gas Division, has determined that for each year of the first five years the rule as proposed will be in effect, there will be fiscal implications for state government in the form of revenue from fees required to be paid to the commission. The net amount of the impact will be zero, because the fees, specified in subsections (d)(2)(G) and (g), will be used by the commission to fund the activities of the TERRA program. There will be no fiscal implications to local government.

Mr. Heith also has determined that the public benefit will consist of keeping non-polluting, mechanically sound wells from being plugged prematurely so that they might be brought back into production as the technological and economic environments change. There is some anticipated economic cost to small businesses or to individuals who choose to participate in this voluntary program in the form of fees which participants are required to pay to the commission. In particular, subsection (d)(2)(H) requires a payment from the mineral interest owner; the exact amount will be determined by the commission at the time of application but will not exceed 75% of the current estimated plugging cost. Subsection (d)(5) states the application fee will be forfeited if the commission takes action against the applicant for materially misstating the condition of a wellbore or wellsite and its compliance.

For persons wishing to obtain a TERRA license, subsection (e) requires a nonrefundable fee of \$50 per well or \$500 per tract. The impact will therefore vary depending on the number of wells and/or tracts for which the person applies. Subsection (e)(1)(C) requires repayment of these fees if the license holder wishes to renew an existing license. Subsection (e)(2)(C) allows the license holder to retain one-half of the proceeds from well production and apportion the other half among the mineral interest ownership, unless otherwise stated in a lease or other legal document.

The Commission has not requested a local employment impact statement, pursuant to Texas Government Code §2001.022(h).

Comments on the proposal may be submitted to John Pierce Griffin, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to docket number 20-0216753. For more information, call Mr. Heith at (512) 463-7070.

The new rule is proposed under Texas Government Code, §2001.004(1), which requires the commission to adopt rules of practice stating the nature of all available formal and informal procedures, and Texas Natural Resources Code, Chapter

93, which creates the TERRA program and authorizes the commission to adopt all necessary rules for its implementation.

The Texas Government Code, §2001.004(1), and the Texas Natural Resources Code, Chapter 93, are affected by the proposed new rule.

§3.107. Texas Experimental Research and Recovery Activity (TERRA).

(a) In enacting the Texas Experimental Research and Recovery Activity ("TERRA") Act (Acts 1995, 74th Legislature, Chapter 989, effective January 1, 1996; codified at Texas Natural Resources Code, Chapter 93), the legislature found that:

(1) current oil and gas production practices will leave unrecovered much of the hydrocarbons originally in place under public and private land and that the economic activity flowing from the recovery of a significant portion of those hydrocarbons would be of great benefit to the future well-being of the people of this state;

(2) the incentives and opportunities provided by the TERRA act, codified at Texas Natural Resources Code, Chapter 93, will enhance and encourage development of new technologies needed to identify and recover those hydrocarbons. The development of those technologies within the state would be of benefit to the state's economy;

(3) mechanically sound, nonpolluting wells that would otherwise be plugged and abandoned are a valuable asset useful in the development of previously overlooked hydrocarbon deposits and new recovery technologies that may lead to a return of the wells to commercial production. Mineral interest owners should be encouraged voluntarily to preserve and use wells toward those ends by agreement with the state under the act; and

(4) the activities provided by this act serve a governmental purpose and benefit the people of this state.

(b) The purposes of the TERRA program are to:

(1) acquire and hold an inventory of mechanically sound and nonpolluting wellbores to be licensed by the commission for use in gathering data, performing production tests, and developing and testing enhanced or advanced recovery techniques;

(2) enable mineral interest owners to realize any commercial potential that may be found in the wellbores as technology and circumstances change; and

(3) protect the environment by ensuring that TERRA wellbores posing a pollution threat or determined to be without economic value are properly plugged in accordance with state law and rules of the commission.

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

(1) Hydrocarbons—Any oil, gas, condensate, or other liquid hydrocarbons produced from a well.

(2) License holder—A person licensed by the commission to use a TERRA wellbore.

(3) Mineral interest owner—An owner of a present possessory mineral interest or vested mineral interest that may become present and possessory.

(4) Present possessory mineral interest—A mineral interest that includes the present right to use the land surface for exploration and production of minerals.

(5) Production test—A test to determine whether a recovery technique will yield production in paying quantities.

(6) Responsible person—A license holder or a person required by law, commission rules, or order to control or clean up wastes associated with oilfield operations.

(7) Surface owner—An owner of an interest in the surface or top estate.

(8) TERRA—Texas Experimental Research and Recovery Activity.

(9) TERRA agreement—A written agreement between a present possessory mineral interest owner and the commission in which the present possessory mineral interest owner:

(A) grants the commission an easement for wellbore access;

(B) designates the commission as the agent of the present possessory mineral interest owner for the purposes of well maintenance and usage licensing; and

(C) allows use of wellsite equipment for the purposes set forth in subsection (b) of this section.

(10) Tract—The land area covered by either an oil lease or a gas proration unit established under commission rules.

(11) Wellbore—A hole in the ground drilled in connection with the exploration, development, or production of oil, gas, or geothermal resources, including any tubular goods cemented in the well.

(12) Wellsite equipment—Any production-related equipment or materials specific to a wellbore, including but not limited to motors, pumps, pumpjacks, fluid storage tanks, separators, compressors, wellheads casing, tubing, and rods.

(d) The procedures to place a wellbore in the TERRA program are as follows:

(1) A mineral interest owner may apply to place a wellbore in the TERRA program by completing and filing the TERRA application (Form W-8(a)) and attendant TERRA agreement and easement forms approved by the commission. The mineral interest owner thereby designates the commission as its agent and grants to the commission an easement for the sole purpose of maintaining and licensing a wellbore. The commission may also place wells scheduled for plugging with state funds into the TERRA program without first obtaining TERRA agreements, provided, however, that all required agreements are secured from the owners of the mineral interests prior to the issuance of any TERRA license. An application to place a wellbore in TERRA may be accepted by the commission if:

(A) The TERRA agreement and easement is executed by the owner or owners of at least 50% of the present possessory mineral interest in all horizons penetrated by the wellbore;

(B) The well and wellsite are in compliance with commission rules;

(C) The wellbore is free of obstructions to the top most plug depth or total depth, whichever is applicable, and is of sound mechanical integrity.

(2) At the time of application the applicant shall conduct a fluid level test and wireline gauge ring run. If the wellbore is at least 25 years old and has been inactive at least 10 years, a mechanical integrity test (MIT) must be conducted in accordance with

the procedures specified on commission form H-15. The MIT shall be substituted for the fluid level test. The commission may require an MIT on any well listed in a TERRA application. In lieu of current tests, the commission may accept a successful MIT test conducted within the previous five years, or two consecutive successful fluid level tests, the most recent of which must have been conducted within the previous year, provided the results are on file with the commission. Any current test conducted to satisfy these conditions requires:

(A) 24-hour prior notice to the commission's district office in the district in which the well is located;

(B) a commission witness in attendance;

(C) the test results properly documented on an applicable form;

(D) all tubing and rods have been removed from the well and all annuli not circulated to ground surface with cement are plumbed to the ground surface and equipped with two-inch operable valves;

(E) the applicant to file with his application copies of all wellbore records in his possession together with such records of the last operator of record;

(F) the applicant to file with his application documentation demonstrating that the wellsite equipment and leasehold are free of any outstanding charges, liens, or obligations; and

(G) the applicant to deposit with his application an amount equal to 75% of the current estimated plugging cost as calculated from the TERRA Estimated Plugging Cost Tables published by the commission.

(3) The commission may consider factors for the approval or disapproval of a TERRA application, including but not limited to the following factors:

(A) geographical location of wellsite or wellbore;

(B) wellsite or wellbore accessibility; and

(C) historical production problems inherent to the area.

(4) The commission shall notify the applicant by written notice within 10 days of the date the application is received in the commission's Austin, Texas, stating:

(A) the application is complete and is accepted for filing; or

(B) the application is incomplete and more information is needed; or

(C) the application has been denied according to criteria as described in subsection (d)(3).

(e) While a well is in the TERRA program, the commission shall assume all well plugging duties for the well and, with the exception of the compliance requirements of a valid TERRA license holder, all pollution prevention and control responsibilities. The commission shall conduct annual inspections and appropriate tests to ensure the continuing integrity of the wellbore. The commission shall retain the necessary records to prove compliance with this requirement.

(f) No person or entity shall conduct operations for the purposes of data collection, production testing, or research and recovery technique development on a TERRA wellbore without first obtaining a TERRA license, as described in this section, prior to the

initiation of operations. The license holder shall conduct only those operations specifically approved and addressed in a valid license. All persons or entities applying for such a license shall possess a valid commission organization report of good standing and comply with all commission rules pertaining to pollution prevention and control.

(g) A separate license application shall be submitted to the commission's Austin office for each oil lease or gas wellbore. The application shall be on a fully completed form W-8(b) and shall include the lesser of \$50 per well or \$500 per tract. At the discretion of the commission, additional information and/or material may be required of the applicant.

(1) Upon approval of the application, the commission shall issue a license setting forth the items listed in §93.034(d) of the Natural Resources Code. The license will not be granted unless the applicant is in full compliance with all applicable commission rules. The license holder shall be considered the responsible person for the licensed wellbores for the duration of the license and until such time as any violations of commission rules or orders committed by the license holder during the term of the license are corrected.

(2) The commission shall hold a hearing on a proposed use in accordance with commission rules, such as §3.37 (relating to statewide spacing rule) and §3.38 (relating to well densities). Such a hearing shall be conducted as a contested case pursuant to commission rules.

(3) Applications to renew existing licenses shall be filed at the commission's Austin office at least 15 days before the expiration date of the current license. Renewal application shall be filed on Form W-8 (B) and shall be accompanied by the fees required in §93.033 of the Texas Natural Resources Code for licenses.

(4) All licenses shall expire 60 days from the date of approval unless properly renewed. Unless awaiting renewal application approval, all operations governed by the license shall terminate upon license expiration.

(5) After notice and opportunity for hearing, the commission may revoke the license of any license holder who violates any provisions of the license or a commission rule or order. The commission may seek administrative penalties and reimbursement of any costs incurred as a result of actions initiated to gain compliance.

(6) Prior to production under a TERRA license, the license holder shall conduct a potential test on any licensed wellbores and submit a letter of request and completed well status report form for oil or gas, whichever is applicable, to the commission's Austin office within 15 days of test completion. Potential tests conducted to satisfy this requirement shall be initiated within 48 hours of initial production and conducted in accordance with standard commission test procedures.

(7) A license holder may use, or may remove and safeguard, wellsite equipment in which it does not have a legal interest. Any person who is not a TERRA license holder and who removes wellsite equipment from a TERRA wellbore shall be subject to the regulatory jurisdiction of the Commission.

(8) Each license filed with the commission shall be considered public information and shall be available for public viewing during regular business hours. Pursuant to the Public Information Act, Texas Government Code, Chapter 552, and Texas Natural Resources Code §93.032 (f).

(9) Prior to the movement of produced oil, gas, or condensate from the lease, the license holder shall file an application for movement authority with and secure the required authorization



from the commission. All hydrocarbons produced during the license period may be sold without the filing of a Producer's Certificate of Compliance and Authorization to Transport Oil or Gas From Lease form provided the production is properly reported on all appropriate commission forms.

(10) Unless otherwise provided by a lease or other legal document, the license holder may retain one-half of the proceeds from the sale of production and shall apportion the remainder of the proceeds to the mineral interest ownership. Payments shall be promptly distributed as required under Texas Natural Resources Code, Chapter 91, Subchapter J. Acceptance of the proceeds by a mineral interest owner not bound by a TERRA agreement serves as a ratification and consent of the agreement and binds that owner to and for the remainder of the agreement.

(h) Produced hydrocarbons that meet the criteria of this section and gain concurrent certification from the commission and the Texas State Comptroller's Office may qualify for an exemption from the severance tax imposed under Texas Tax Code, Chapter 201. The commission may grant certification administratively or after the acceptance and approval of a proper application.

(1) The hydrocarbon production shall be established from wellbores under an active TERRA agreement and corresponding license, or from wellbores resuming production after formerly participating for a period of two or more years in the TERRA program to qualify for commission certification for severance tax exemption.

(2) An application for a severance tax exemption shall be made only by the operator of a well and shall be submitted to the commission's Austin office. The application shall be in the form of a letter of request and shall include certified copies of all commission production reports verifying the qualifying production periods and any other documents the commission may require for qualification determination.

(3) A commission designee may administratively approve or deny any application for severance tax exemption. If approved, the commission shall issue a certificate to the operator of the well. Such certificates are valid only with Comptroller approval of the exemption. The commission shall provide the Comptroller a copy of each certificate issued for a qualifying well.

(4) A commission designee may administratively revoke any certification based on information attesting to non-eligibility of the well or the revocation of the TERRA license at the time certification is sought.

(5) The commission may impose penalties against a person for:

(A) submitting any document in support of a certificate, tax exemption, or tax credit that the person knows contains a material misstatement; and

(B) submitting an application for tax exemption under a revoked certificate after receiving notice from the commission of the revocation.

(i) A wellbore may be released from the TERRA program upon plugging and abandonment, with prior commission permission, or upon application for and commission approval of release.

(1) A present possessory mineral interest owner of the tract in which the wellbore is located may submit a written request with a copy of the TERRA agreement covering the subject well or wells to the commission's Austin office requesting release of the wellbore from the TERRA program. The applicant shall state

whether it is bound by a TERRA agreement or not. If approved, the effective date of release shall be no earlier than the day after any current TERRA license expires unless the applicant submits a written release from the license holder approving an earlier release date. An application by a mineral interest owner for release of a wellbore from the TERRA program shall have priority over new, amended, or renewed existing licenses. Such release is contingent upon:

(A) the applicant being in compliance with all commission rules and permits required for the operation or plugging of the subject well;

(B) the applicant assumes all plugging responsibility, including financial, for the well and cleanup of the site with the exception of the equipment reinstallation and land restoration responsibilities required of any valid TERRA license holder; and

(C) if the applicant is a present possessory mineral interest owner bound by a TERRA agreement, the commission may either impose financial obligations not to exceed twice the estimated plugging costs as determined by the commission at the time the release is sought on the applicant to facilitate the release, or if the applicant agrees to plug the well and complies with all commission plugging rules, the commission may not require any payment upon application approval.

(2) The owner or owners of at least 50% of the surface estate of wellbores that have been in the TERRA program in excess of seven years may request in writing that the commission plug the wells. Upon receipt of the request and, if required of the surface owners by the commission, any instrument verifying the legal ownership claimed as the basis of their standing from which to compel the plugging of the wellbore, the commission shall

(A) notify all license holders and present possessory mineral interest owners who have signed a TERRA agreement of the request and potential commission action; and

(B) if, within the latter of 90 days from the date of notice or the expiration of any existing license, the notified individuals fail to effect a release of the wellbore from the TERRA program, the commission shall schedule the wellbore for plugging.

(3) At such time as the release of the last TERRA wellbore from a tract of land covered by a TERRA agreement, the commission shall file a release of all TERRA easements for that tract in the office of the clerk of the county in which that tract is located.

(j) The commission shall estimate the anticipated plugging costs biannually, or at such time as conditions or information warrant adjustment. The costs shall be established using the most current information available from state-funded pluggings, and shall be established on a depth interval per commission district basis. Fees imposed by this section and per these estimated plugging costs shall be based on similar well depths in the corresponding commission district in which the well is located.

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

Filed with the Office of the Secretary of State on July 17, 1998.

TRD-9811284

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 30, 1998

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



## Part II. Public Utility Commission of Texas

### Chapter 23. Substantive Rules

#### Subchapter H. Telephone

##### 16 TAC §23.96

*(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 §23.96, relating to Telephone Directories. Project Number 19431 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, §23.96 will be duplicative of proposed new §26.128 of this title (relating to Telephone Directories) in Chapter 26 (Substantive Rules Applicable to Telecommunications Service Providers).

Martin Wilson, 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. Wilson 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 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. Wilson also has 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 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 19431, repeal of §23.96.

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.

§23.96. Telephone Directories.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811380

Rhonda Dempsey

Rule Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 9, 1998

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



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

### Subchapter F. Regulation of Telecommunications Services

##### 16 TAC §26.128

The Public Utility Commission of Texas (PUC or commission) proposes new §26.128, relating to Telephone Directories. The proposed new rule will address directory requirements applicable to dominant certificated telecommunications utilities or their affiliates, telecommunications utilities or their affiliates, and private for-profit publishers of residential telephone directories. Project Number 19431 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.

This section is intended to replace §23.61(b) of this title, and §23.96 of this title (relating to Telephone Directories). The repeal of §23.96 is filed simultaneously with proposed

new §26.128. The repeal of §23.61 is forthcoming, once its subsections are absorbed by new rules in Chapter 26. Until §23.61 is repealed, to the extent that §23.61(b) may be inconsistent with §26.128, proposed new §26.128 will control.

The commission proposes making the telephone directory rule more user-friendly by adding catchlines to each subsection of §26.128, and each paragraph of subsection (b). Section 23.96(b)(4) has been divided into two paragraphs and subparagraphs in §26.128.

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. The *Texas Register* will publish these sections 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 19431.

New §26.128(a) defines the term private for-profit publisher. Section 26.128(b) and (c) apply to telecommunication utilities or their affiliates. Section 26.128(b) sets forth the requirements for publication of telephone directories. As mandated by the Public Utility Regulatory Act, Texas Utilities Code Annotated §55.202 and §55.203 (Vernon 1998) (PURA), proposed §26.128(c) requires that directories published by a telecommunications utility or affiliate of that utility must include names, addresses and telephone numbers of state senators and representatives who represent all or part of the geographical area for which the directory contains listings. Proposed §26.128 primarily changes §23.96(d). As required by Act of May 28, 1997, 75th Legislature, Regular Session, Chapter 1186, §2, 1997 Texas General Laws 4574 (SB 897), proposed §26.128(d) mandates new requirements regarding state agency, service and officials' listings. Private for-profit directory publishers are now mandated to conform with state telephone number listings developed by the Records Management Interagency Coordinating Council.

Martin Wilson, assistant general counsel, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Wilson also 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 providing reliable, consistent and user-friendly telephone directories, particularly including the form of reference to state telephone number listings. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Wilson also has 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.

The commission staff will conduct a public hearing on this rule-making under Government Code §2001.029 at the commission's offices on September 21, 1998 at 9:30 a.m. in the Commissioners Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding whether this rule, in combi-

nation with P.U.C. Substantive Rule §23.97(e)(1)(D) relating to interconnection, provides clear and adequate guidance to parties regarding the availability of directory listings to all Texas telephone customers. The commission also solicits comments on how directory assistance and listings may enhance or impede telecommunications competition.

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 19431.

This new section is proposed under PURA §14.002, 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, §55.202, §55.203 and Senate Bill 897. PURA §55.202 requires that directories published by a telecommunications utility or affiliate of that utility must include names, addresses and telephone numbers of state senators and representatives who represent all or part of the geographical area for which the directory contains listings. PURA §55.203 requires that private for-profit publishers of residential telephone directories include toll-free and local telephone numbers of state agencies, state public services and state elected officials who represent all or part of the geographical area for which the directory contains listings in a clearly identified manner. Senate Bill 897 requires that private for-profit publishers follow guidelines developed by the Records Management Interagency Coordinating Council for state telephone number listings.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 55.202, 55.203, and Act of May 28, 1997, 75th Legislature, Regular Session, Chapter 1186, § 2, 1997 Texas Gen. Laws 4574 (Senate Bill 897).

§26.128. Telephone Directories.

(a) Definition. In this section, the term "private for-profit publisher" shall mean a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost.

(b) Requirements. This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate which publishes a directory on behalf of such telecommunications utility.

(1) Annual Publication. Telephone directories shall be published annually. Except for customers who request that information be unlisted, directories shall list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) Distribution. Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another certificated telecommunications utility. A copy of each directory shall be furnished to the commission.

(3) Front cover requirements. The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.

(4) Required instructions. The directory shall contain instructions concerning:

(A) placing local and long distance calls on the network of the telecommunications utility for which the directory is issued;

(B) calls to the telecommunications utility's repair and directory assistance services, and locations; and

(C) telephone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory.

(5) Sample long distance rates. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

(6) Directory assistance. Each telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except those numbers excluded from listing in paragraph (1) of this subsection) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.

(7) Non-assigned numbers. All non-assigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.

(8) Disconnected numbers. Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(9) Incorrect listings. If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.

(10) Changing telephone numbers to a group of customers. When additions or changes in plant or changes to any other certificated telecommunications utility's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

(11) Customer addresses. At the customer's option the directory shall list either the customer's street address or post office box number. A charge can be imposed upon those customers who desire both listings.

(c) Listings for government representatives. A telecommunications utility or an affiliate of that utility that publishes a residential or business telephone directory that is distributed to the public shall

publish the name, address, and telephone number of each state senator or representative who represents all or part of the geographical area for which the directory contains listings.

(d) State listing requirements. Any private for-profit publisher and any telecommunications utility or its affiliate that publishes a residential telephone directory shall comply with the following requirements:

(1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:

(A) state agencies;

(B) state public services; and

(C) elected state officials who represent all or part of the geographical area for which the directory contains listings.

(2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the General Services Commission of the State of Texas and those modifications to the State of Texas Telephone Directory that are available upon request from the General Services Commission of Texas.

(3) Private for-profit publishers shall contact the General Services Commission of Texas in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The General Services Commission shall respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:

(A) may be located at the front of the directory or, if not located at the front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;

(B) shall be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;

(C) shall be bordered or shaded in such a way (on the three unbound sides with a border) that will distinguish the state listings from the other listings;

(D) shall be included in the directory at no cost to the agency or official;

(E) shall be in compliance with the categorization developed by the Records Management Interagency Coordinating Council. The categorization shall be available upon request from the General Services Commission. The listings shall be arranged in two ways:

(i) alphabetically by subject matter of state agencies; and

(ii) alphabetically by agency and public service name.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811381

Rhonda Dempsey  
Rules Coordinator

Public Utility Commission of Texas  
Earliest possible date of adoption: August 9, 1998  
For further information, please call: (512) 936-7308



## Part IX. Texas Lottery Commission

### Chapter 401. Administration of State Lottery Act

#### Subchapter C. Practice and Procedure

##### 16 TAC §401.229

The Texas Lottery Commission proposes new §401.229, concerning Administration of State Lottery Act. The proposed new section allows the Commission to enter default judgments in cases where the applicant or licensee fails to appear for a hearing.

Richard Sookiasian, Budget Analyst, has determined that, for each of the first five years that the rule will be in effect, there will be no foreseeable fiscal implication for state or local government as a result of enforcing or administering the rule.

Mr. Sookiasian, also has determined that, for each year of the first five years that the rule will be in effect, there will not be a foreseeable economic costs to person or small businesses required to comply with the rule. In addition, the proposed amendment should not adversely affect any local economy.

Kimberly L. Kiplin, General Counsel, has determined that the public benefits expected as a result of the adoption of the rule is more efficient administration of the Commission's rules in hearings.

Written comments on the proposal may be submitted to Katherine Minter Cary, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or may be faxed to (512) 344-5189.

The amendment is proposed under Texas Revised Civil Statutes, Article 179d, § 24 and § 16, subsections (a) and (d) which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the Texas Government Code, § 467.102 which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

The following statutes are effected by the proposed amendment: Texas Revised Civil Statutes, Article 179d and Texas Government Code, Chapter 466.

##### §401.229. Default Hearings.

(a) If an applicant or licensee fails to appear in person or by authorized representative on the day and at the time set for hearing, the Administrative Law Judge, upon motion by the Commission, shall enter a default judgment in the matter adverse to the applicant or licensee who has failed to attend the hearing.

(b) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the applicant or licensee in which the factual allegations against the applicant or licensee contained in the Notice of Hearing shall be admitted as prima facie evidence, and deemed admitted as true, without any requirements for additional proof to be submitted by the Commission.

(c) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the Notice

of Hearing, and upon the proof of proper notice to the defaulting party opponent. For purposes of this section proper notice means notice sufficient to meet the provisions of the Government Code §§2001.051, 2001.052, 2001.054. Such notice also shall include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE NOTICE OF HEARING BEING ADMITTED AS TRUE AND THE RELIEF REQUESTED MAY BE GRANTED BY DEFAULT.

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

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

TRD-9811071

Kimberly L. Kiplin  
General Counsel

Texas Lottery Commission

Earliest possible date of adoption: August 30, 1998

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



## Chapter 402. Bingo Regulation and Tax

### 16 TAC §402.567

The Texas Lottery Commission proposes an amendment to §402.567, concerning Bingo Regulation and Tax. The proposed new subsection will establish by rule the abolition date of the Bingo Advisory Committee.

Richard Sookiasian, Budget Analyst, has determined that, for each of the first five years that the rule will be in effect, there will be no foreseeable additional fiscal implication for state or local government as a result of enforcing or administering the amendment to the rule.

Mr. Sookiasian, also has determined that, for each year of the first five years that the rule will be in effect, there will not be a foreseeable economic cost to persons or small businesses required to comply with the rule. In addition, the proposed amendment should not adversely affect any local economy.

William L. Atkins, Acting Charitable Bingo Operations Director, has determined that the public benefits expected as a result of the adoption of the amendment to the rule is a continuation of efficient regulation and administration of Charitable Bingo in the state based on the input provided by the Bingo Advisory Committee.

Written comments on the proposal may be submitted to Katherine Minter Cary, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or may be faxed to (512) 344-5189.

The amendment is proposed under Texas Government Code, §2110.008, Texas Revised Civil Statutes, Article 179d, §43 and §16(a) which authorize the Texas Lottery Commission to adopt rules for a Bingo Advisory Committee and for the enforcement and administration of the Bingo Enabling Act and the Texas Government Code, § 467.102 which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

The following statutes are effected by the proposed amendment: Texas Revised Civil Statutes, Article 179d.

§402.567. *Bingo Advisory Committee.*

(a)-(h) (No change.)

(i) Duration. The Bingo Advisory Committee will automatically abolish and cease to exist on March 6, 2003. The Bingo Advisory Committee shall only remain in existence beyond March 6, 2003, if the Commission affirmatively votes to continue the Bingo Advisory Committee in existence. This proposed amendment to the rules has been reviewed by legal counsel and has been found to be within the Texas Lottery Commission's statutory authority to adopt.

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

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

TRD-9811073

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: August 30, 1998

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



## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 92. Interagency Coordination

##### Subchapter AA. Memoranda of Understanding

###### 19 TAC §92.1001

The Texas Education Agency (TEA) proposes new §92.1001, concerning memorandum of understanding for coordinated services to children and youth. Section 92.1001 provides for a memorandum of understanding (MOU) among various state agencies, including the TEA, to establish a system of community resource coordination groups. The intent of the MOU is to ensure coordination between agencies to serve children and youth. Proposed new 19 TAC §92.1001 adopts by reference the MOU adopted by the Texas Department of Protective and Regulatory Services in 40 TAC §736.701.

The State Board of Education adopted 19 TAC §75.196, Memorandum of Understanding for Multiproblem Children and Youth, in April 1989. Section 75.196 was effective May 3, 1989, and repealed during the 1995-96 sunset review of board rules. Proposed new 19 TAC §92.1001 adopts the MOU by rule as required under the Family Code, §264.003, as added by Acts 1995, 74th Texas Legislature. The MOU provides a definition of children and youth with multi-agency needs and addresses the areas of financial and statutory responsibilities of each agency, interagency cost-sharing, elimination of duplicative services, interagency dispute resolution, and composition of the local level groups designated to facilitate coordination.

Pat Pringle, associate commissioner for school support and continuing education, 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 new section.

Mr. Pringle and Criss Cloudt, associate commissioner for policy planning and research, have 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 ensuring that school districts can access other agencies for assistance in serving children and youth. The MOU will also increase the accountability for services to children and youth, resulting in more equitable distribution of responsibility among agencies. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The new section is proposed under the Family Code, §264.003, as added by Acts 1995, 74th Texas Legislature, Chapter 20, §1, which authorizes the adoption by rule of a joint memorandum of understanding with various agencies to implement a system of local level interagency staffing groups to coordinate services for multiproblem children and youth.

The new section implements the Family Code, §264.003.

§92.1001. Memorandum of Understanding for Coordinated Services to Children and Youth.

Implementation of a system of community resource coordination groups to coordinate services for children and youth among the Texas Department of Protective and Regulatory Services, Texas Commission for the Blind, Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Interagency Council on Early Childhood Intervention, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, and Texas Youth Commission is contained in the memorandum of understanding for coordinated services to children and youth, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Protective and Regulatory Services, 40 TAC §736.701, concerning memorandum of understanding for coordinated services to children and youth. A copy of the memorandum of understanding is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

This 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 20, 1998.

TRD-9811414

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

Earliest possible date of adoption: August 30, 1998

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



## TITLE 22. EXAMINING BOARDS

### Part XIV. Texas Optometry Board

## Chapter 277. Practice and Procedure

### 22 TAC §277.1

The Texas Optometry Board proposes an amendment to §277.1, to reference a complaint form, rather than printing the form in its entirety within the rule. This will allow housekeeping changes to be made to the complaint form without formal notice.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Lois Ewald also has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the amended rule is that the general public will receive current and efficient information for filing complaints against optometrists. It has also been determined that there will be no cost to the public over the first five years as a result of enforcing or administering the rule. Since the amendment imposes no duties on small businesses, there will be no adverse economic effects on small businesses.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is September 1, 1998.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, §§2.14, 4.06, and 4.07.

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 §4.06 as authorizing the interpretation of how the Board should handle complaints in general, and the Board interprets §4.07 as authorizing the investigation and disposition of complaints received.

#### §277.1. Complaint Procedures.

(a) Filing complaints. Complaints may be filed with the agency in person at the board's office, or in any written form, including submission of a completed complaint form. The board shall adopt a [the following] form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:

- (1) complainant's name, address, and phone number;
- (2) name, address, and phone number of the optometrist, therapeutic optometrist, or other person, firm, or corporation, if known;
- (3) date, time, and place of occurrence of alleged violation; and
- (4) complete description of incident giving rise to the complaint.

[Figure: 22TAC277.1(a)(4)]

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

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

Filed with the Office of the Secretary of State on July 16, 1998.

TRD-9811254

Lois Ewald

Executive Director

Texas Optometry Board

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 305-8502

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 97. Communicable Diseases

The Texas Department of Health (department) proposes repeal of existing §§97.131 - 97.134, amendments to §§97.1 - 97.4, 97.6, 97.139, and proposes new §§97.131 - 97.134, and 97.145 - 97.146 concerning reporting requirements for sexually transmitted diseases (STD), which include Acquired Immune Deficiency Syndrome (AIDS), chancroid, *Chlamydia trachomatis* infection, gonorrhea, Human Immunodeficiency Virus (HIV) infection, and syphilis. The proposed repeal, amendments, and new sections involve major revisions in the format and content of the sections. The proposed sections will enable the reporting sources to more clearly identify the conditions and diseases which must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting to the local health authority or the department.

Specifically, the amendments to §§97.1 - 97.4, 97.139 remove the definitions of HIV and AIDS from the general communicable disease definition section to eliminate redundancy, consistently define STD to include HIV and AIDS, and consistently list all the reportable STD together and alphabetically as AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis. All definitions are numbered in new *Texas Register* format to comply with the 1 Texas Administrative Code §91.1, effective February 17, 1998. An amendment to §97.139 deletes a reference to an obsolete phone number. The proposed new §97.131 combines and modifies the definitions of HIV and AIDS, adds a definition of other reportable STD which is consistent with the definition of these diseases by the Centers for Disease Control and Prevention, and allows for the definitions to reflect changes in testing technologies and disease knowledge when they occur in the future. The proposed new §§97.132 - 97.134 combines all reportable STD, eliminating separate sections for HIV and AIDS. The proposed changes allow for similar information to be reported on all STD, reducing the need for required reporters to submit different information for each STD. Specifically, all reportable STD including HIV and AIDS will be reported by name along with other minimally required information, regardless of the age of the patient. The proposed changes would eliminate HIV infection reporting by a numerical code for persons aged 13 and older. The proposed changes require reporting of all CD4+ T lymphocyte counts instead of the previous requirement for reporting only CD4 + T lymphocyte counts of less than 200 cells/microliter or CD4+ T lymphocyte percentages of less than 14%. This expanded reporting requirement for CD4+ T lymphocyte counts beyond the use of these counts just as an indicator of AIDS, will allow for better monitoring of disease trends at all stages of HIV infection

not just when the CD4+ T lymphocyte count is indicative of AIDS.

The proposed amended §97.134 and the proposed new §97.146 add language on the confidentiality of all case reports and test results and §97.146 adds references to the penalties for release or disclosure of a confidential test result. The proposed new §97.145 provides for certain state-funded clinics to offer voluntary and affordable counseling and testing programs for HIV infection or refer clients to such programs. This section also stipulates that all HIV testing sites funded by the department shall offer confidential and anonymous HIV testing on site.

Martin Powel, Chief of Staff Services, Associateship for Disease Control and Prevention, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Mr. Powel has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved reporting of these STD including AIDS and HIV infection, leading to better and more timely treatment of these serious health conditions. In addition, improved reporting of these diseases will produce data which will be more uniform, accurate, reliable, and complete and will enable improved planning for and targeting of disease prevention activities and the provision of clinical and social services. There is no anticipated additional cost to small businesses nor to persons who may be required to comply with the sections as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Sharilyn K. Stanley, M.D., Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 490-2505. Comments will be accepted for 30 days after publication in the *Texas Register*.

## Subchapter A. Control of Communicable Diseases

### 25 TAC §§97.1-97.4, 97.6

The amendments are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; new sections are also proposed under the Human Immunodeficiency Virus Services Act, and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect Chapters 81 of the Health and Safety Code.

#### §97.1. Definitions.

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

(1) Act - Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

[AIDS - Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United

States Public Health Service. The publication designating the most current definition may be requested from: Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756, (512) 490-2555 or 1-800-299-2973.]

(2) Carrier - An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir for the infection of man.

(3) Case - As distinct from a carrier, the term "case" is used to mean a person in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by laboratory findings.

(4) Commissioner - Commissioner of Health.

(5) Communicable disease - An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(6) Contact - A person or animal that has been in such association with an infected person or a contaminated environment so as to have had opportunity to acquire the infection.

(7) Department - Texas Department of Health.

(8) Disinfection - Destruction of infectious agents outside the body by chemical or physical means directly applied.

(9) Epidemic or outbreak - The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

(10) Exposure - A situation or circumstance in which there is significant risk of becoming infected with the etiologic agent for the disease involved.

(11) Health authority - A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be:

(A) a local health authority:

(i) director of a local health department; or

(ii) physician as appointed by the Commissioner of Health if there is no director of a local health department.

(B) a regional director of the Texas Department of Health if no physician has been appointed by the Commissioner of Health as a local health authority.

~~[HIV - Human immunodeficiency virus.]~~

~~[HIV infection - Infection with HIV confirmed by one of the following laboratory procedures:]~~

~~[(A) a serum specimen that is repeatedly reactive for HIV antibody by a licensed screening test (e.g. enzyme-linked immunosorbent assay (ELISA)) and the same or an additional serum specimen that is positive by a subsequent test (e.g. Western blot, immunofluorescence assay); or]~~

~~[(B) a positive test for serum HIV antigen; or]~~

~~[(C) a positive lymphocyte culture confirmed by an HIV specific antigen test (not just reverse transcriptase detection); or]~~



~~{(D) by in situ hybridization technique using a Deoxyribonucleic acid (DNA) probe (e.g. polymerase chain replication (PCR))}~~

(12) Hospital laboratory - Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

(13) Outbreak - See definition of epidemic in this section.

(14) Penicillin resistant *Streptococcus pneumoniae* - *Streptococcus pneumoniae* with a penicillin minimum inhibitory concentration (MIC) of 2 µg/mL or greater (high level), and an intermediate level resistance of 0.1- 1 µg/mL.

(15) Physician - A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

(16) Regional director - The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121.

(17) Report - Information that is required to be provided to the department.

(18) Report of a disease - The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.

(19) Reportable disease - Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What Condition To Report and What Isolates To Report or Submit). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "reportable disease."

(20) Significant risk - A determination relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgements given the state of medical knowledge, relating to the following:

(A) nature of the risk (how the disease is transmitted);

(B) duration of the risk (how long an infected person may be infectious);

(C) severity of the risk (what is the potential harm to others); and

(D) probability the disease will be transmitted and will cause varying degrees of harm.

(21) School administrator - The city or county superintendent of schools, or the principal of any school not under the jurisdiction of a city or county board of education.

(22) Specimen Submission Form G-1 - A multipurpose specimen submission form available from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.

(23) Vancomycin resistant *Enterococcus* species - *Enterococcus* species with a vancomycin MIC greater than 16 micrograms per milliliter (µg/mL) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (eg, *Enterococcus casseliflavus* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 µg/mL - 16 µg/mL do not need to be reported.

(24) Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species - For the purposes of reporting, *Staphylococcus aureus* or a coagulase negative *Staphylococcus* species with a vancomycin MIC of 8 µg/mL or greater.

§97.2. *Who Shall Report.*

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

(d) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school and the administrator or health official of a public or private institution of higher learning should report as required by these sections those students attending school who are suspected of having a reportable disease. School authorities are exempt from reporting sexually transmitted diseases, including acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection, in accordance with §97.132~~(4b)~~(5) (relating to Who Shall Report Sexually Transmitted Diseases.)

(e)-(g) (No change.)

§97.3. *What Condition To Report and What Isolates To Report or Submit.*

(a) Identification of reportable conditions.

(1) (No change.)

(2) Repetitive test results from the same patient do not need to be reported except for mycobacterial infections and sexually transmitted diseases, including AIDS and HIV infection.

(b) (No change.)

(c) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(1) (No change.)

(2) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases, including AIDS and HIV infection);

~~{(2) for AIDS and HIV infection - shall be reported in accordance with §§97.132 - 97.134 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection);}~~

~~{(3) for chancroid, *Chlamydia trachomatis* infection, gonorrhea, and syphilis shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV);}~~

(3) ~~[(4)]~~ for tuberculosis - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, antibiotic susceptibility results, initial antibiotic therapy, and any change in antibiotic therapy;

(4) ~~[(5)]~~ for all other reportable conditions listed in subsection (b)(1) of this section - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number;

(5) ~~[(6)]~~ for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns - numeric totals at least quarterly; and

(6) ~~[(7)]~~ for vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant

*Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species, - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture.

(d) (No change.)

§97.4. *When to Report a Condition or Isolate; When to Submit an Isolate.*

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

(c) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhoea, HIV infection, and syphilis shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection);

~~[(c) Chancroid, *chlamydia trachomatis* infection, gonorrhoea, and syphilis shall be reported in accordance §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV.)]~~

~~[(d) AIDS and HIV infection shall be reported in accordance with §§97.132 - 97.134 of this title.]~~

(d) [(e)] Tuberculosis antibiotic susceptibility results should be reported by laboratories no later than one week after they first become available.

(e) [(f)] For all other reportable diseases not listed in subsections (a)-(c) of this section, reports of disease shall be made no later than one week after a case or suspected case is identified.

(f) [(g)] For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin - resistant *Streptococcus pneumoniae* - reports shall be made no later than the last working day of March, June, September, and December.

(g) [(h)] All *Neisseria meningitidis* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus*, and all vancomycin resistant coagulase negative *Staphylococcus* species shall be submitted as pure cultures to the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756-3199 as they become available.

§97.6. *Reporting and Other Duties of Local Health Authorities and Regional Directors.*

(a) (No change.)

(b) Those reportable conditions identified as public health emergencies in §97.4(a) of this title (relating to When to Report a Condition or Isolate; When to Submit an Isolate) shall be reported immediately to the department by telephone.

(c) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhoea, HIV infection and syphilis shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection).

~~[(c) Chancroid, *chlamydia trachomatis* infection, gonorrhoea, and syphilis shall be reported in accordance with §§97.132, - 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection).]~~

~~[(d) AIDS and HIV infection shall be reported in accordance with §§97.132 - 97.134 of this title]~~

(d) [e] The local health authority or the department's regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department:

(1) for chickenpox - numerical totals by age group; and

(2) for ~~[all other]~~ reportable diseases not listed in subsection (c) or (d)(1) of this section - by name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number.

(e) [f] Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(2) If by electronic transmission, including facsimile transmission by telephone, the local health authority or the department's regional director must obtain prior approval of the manner and form of the transmission from the commissioner of health (commissioner) or his/her designee. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(f) [g] The health authority shall notify health authorities in other jurisdictions of a case or outbreak of a communicable disease that has been reported if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department shall assist the health authority in providing such notifications upon request. The health authority of the area where the case or outbreak is diagnosed shall report the case or outbreak to the department on the same basis as other reports.

(g) [h] The health authority upon identification of a case or upon receipt of notification or report of disease shall take such action and measures as may be necessary to conform with the appropriate control measure standards. The health authority may upon identification of a case or upon report of a communicable disease in a child attending a public or private child-care facility or a school notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the health authority if necessary or desirable in the administration of a regional or statewide public health program or policy.

(h) [i] The health authority is empowered to close any public or private child-care facility, school or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly shall not reopen until permitted by the health authority who caused its closure.

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

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Susan K. Steeg  
General Counsel

Texas Department of Health

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

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Subchapter F. Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)

## 25 TAC §§97.131-97.134

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

The repeal is proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; new sections are also proposed under the Human Immunodeficiency Virus Services Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The repeal affects Chapters 81 of the Health and Safety Code.

§97.131. *Definitions.*

§97.132. *Who Shall Report Sexually Transmitted Diseases.*

§97.133. *Reporting Information for Sexually Transmitted Diseases.*

§97.134. *How to Report Sexually Transmitted Disease.*

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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## 25 TAC §§97.131-97.134, 97.139, 97.145, 97.146

The amendment and new sections are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; new sections are also proposed under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, which provides the Board of Health with the authority to adopt rules concerning HIV grants; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendment and new sections affect Chapters 81 and 85 of the Health and Safety Code.

§97.131. *Definitions.*

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

(1) AIDS and HIV Infection - Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection are as defined by the Centers for Disease Control and Prevention of the United States Public Health Service and in accordance with the Health and Safety Code §81.101. The publication designating the most current definition may be requested from: Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756.

(2) Chancroid, *Chlamydia trachomatis* infection, gonorrhea and syphilis - These diseases are as defined by the Centers for Disease Control and Prevention of the United States Public Health Service. The publication designating the most current definition may be requested from: Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756.

(3) Sexually transmitted disease - An infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations, and that produces or might produce a disease in, or otherwise impair, the health of either person, or might cause an infection or disease in a fetus in utero or a newborn. Acquired Immune Deficiency Syndrome (AIDS), chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis are sexually transmitted diseases reportable under these rules.

§97.132. *Who Shall Report Sexually Transmitted Diseases.*

The following shall provide information on cases of AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis:

(1) A physician or dentist shall report each patient that is diagnosed or treated for AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis. A physician or dentist may designate an employee of the clinic, including a school based clinic or physician's/dentist's office to serve as the reporting officer. A physician or dentist who can assure that a designated or appointed person in their clinic or office is regularly reporting every occurrence of these diseases does not have to submit a duplicate report.

(2) The chief administrative officer of a hospital, a medical facility or a penal institution shall report each patient who is medically attended at the facility and is diagnosed with AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis. The chief administrative officer may designate an employee of their institution to serve as the reporting officer. A chief administrative officer who can assure that a designated or appointed person in their institution is regularly reporting every occurrence of these diseases does not have to submit a duplicate report. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(3) Any person in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a blood specimen or any specimen derived from a human body that yields microscopic, cultural, serological or any other evidence of AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis, including a CD4+ T lymphocyte cell count, shall report according to §97.133 of this title (relating to Reporting Information for Sexually Transmitted Diseases).

(4) The medical director or other physician responsible for the medical oversight of a counseling and testing site or a community-based organization shall report each patient that is diagnosed with AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis. The medical director or clinic physician may designate an employee of the counseling and testing site or community-based organization to serve as the reporting officer. A medical director or clinic physician who can assure that a designated or appointed person from their counseling and testing site or community-based organization is regularly reporting according to §97.133 of this title every occurrence of these diseases does not have to submit a duplicate report.

(5) School administrators, as defined in §97.1 of this title (relating to Definitions), who are not medical directors meeting the criteria described in this section, are exempt from reporting AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection or syphilis.

(6) Failure to report a reportable disease is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.

§97.133. Reporting Information for Sexually Transmitted Diseases. The following information, at a minimum, shall be reported for any specimen derived from a human body that yields microscopic, cultural, serological or any other evidence of AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection or syphilis, including a CD4+ T cell count:

(1) laboratories: name, address, city, county and zip code of residence, date of birth (month, day, year), sex, race/ethnicity, date test(s) performed, type(s) of test(s) performed, result of the test(s) or CD4+ T cell count, physician's name, physician's/clinic's address and telephone number. Positive tests and all CD4+ T cell counts shall be reported and;

(2) others as described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases): name, address, city, county and zip code of residence, date of birth (month, day, year), sex, race/ethnicity, diagnosis, stage of diagnosis for syphilis only, date test(s) performed, type(s) of test(s) performed, and result(s) of test(s) or CD4+ T cell count, treatment provided, physician's name, physician's/clinic's address and telephone number.

§97.134. How to Report Sexually Transmitted Disease.

(a) All case reports received by the health authority or the department are confidential records and not public records.

(b) Reporting forms and/or information from all entities required to report should be sent to the local health department director where the physician's office, hospital, laboratory or medical facility is located or, if there is no such facility, the reports should be forwarded to the regional director in the region where the physician's office, hospital, laboratory, or medical facility is located.

(c) If any individual or entity is unsure where to report any of the diseases mentioned in this title, the reports shall be placed in a sealed envelope addressed as follows: Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756 and the envelope shall be marked "Confidential." The envelope shall be delivered with the seal unbroken to the HIV/STD Epidemiology Division office for opening and processing of the contents. Postage paid envelopes may be obtained by contacting the HIV/STD Epidemiology Division and are provided without charge.

(d) Reporting forms can be obtained from local health departments, regional offices, and the Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin Texas, 78756. Forms shall be provided without charge to individuals required to report.

(e) Reports of confirmed or suspected sexually transmitted diseases including AIDS and HIV infection must be submitted within seven days of the determination of the existence of a reportable condition.

(f) Laboratories shall submit information weekly. If, during any calendar quarter, tests for chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection and syphilis are performed and all test results are negative, the person in charge of reporting for the laboratory shall submit a statement to this effect on or before January 5, April 5, July 5, and October 5 following that calendar quarter.

(g) A local health director or regional director may authorize one or more employees under his/her supervision to receive the report from the physician by telephone and to physically complete the form; use of this alternative, if authorized, is at the option of the reporting physician. The local health department director or regional director shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.

(h) A local health department director or regional director shall forward to the department at least weekly all reports of cases received by him/her. Transmittal may be by mail, courier or electronic transmission.

(i) If reporting by electronic transmission, including facsimile transmission by telephone, the same degree of protection of the information against unauthorized disclosure shall be provided as those of reporting by mail or courier transmittal. The department shall, before authorizing such transmittal, establish guidelines for establishing and conducting such transmission.

§97.139. Fee for Providing Written Notice of a Positive Human Immunodeficiency Virus.

(HIV)-Related Test Result to an Applicant for Insurance. An applicant for insurance must be given written notice of a positive HIV-related test result by a physician designated by the applicant, or in the absence of that designation, by the Texas Department of Health (department). If the department is requested to make this notification:

(1) the form designated by the department for this purpose must be used. Copies of the form and other information concerning notification by the department may be requested from: Bureau of HIV and STD Prevention, 1100 West 49th Street, Austin, Texas 78756-3199, [(512) 458-7463]; and

(2) (No Change.)

§97.145. Anonymous and Confidential HIV Testing.

(a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall provide voluntary, and affordable counseling and testing programs, both anonymous and confidential concerning HIV infection or provide referrals to those programs.

(b) All HIV testing sites funded by the Texas Department of Health shall offer the option of confidential or anonymous HIV testing on site.

§97.146. Confidentiality of HIV/STD Test Results.

A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by Health and Safety Code, §81.103 Confidentiality; Criminal Penalty. A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this section is a Class A misdemeanor.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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

◆ ◆ ◆  
Chapter 127. Registry for Providers of Health-Related Services

25 TAC §127.1, §127.4

The Texas Department of Health (department) proposes amendments to §127.1 and §127.4, concerning the voluntary registry for providers of health-related services. Specifically, the sections cover request for placement of an occupation on the registry, and fees. The amendment to §127.1 allows the department to require a request fee be paid by state-wide health-related professional organizations with members whom it officially recognizes as providers of a specific health-related service, or at least 200 persons employed or used as providers of a specific health-related service at the time the request is filed. The amendment to §127.4 sets forth the request fee and increases the fees for the initial application and annual reapplication.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be fiscal implications as a result of administering the sections as proposed. The fees are projected to generate revenues of \$13,000 per year for state government. There will be no fiscal implications for state or local governments.

Ms. Underwood has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to identify health-related service providers who should be listed on a registry, and to generate fees sufficient to administer the program. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rules as proposed will be the increase in fees for registrants and addition of the request fee to be paid by health-related professional organizations or groups of persons requesting placement on the registry. There will be no impact on local employment.

Comments on the proposal may be submitted to Kathy Craft, Director of Programs, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, telephone (512) 834-6602. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Health and Safety Code, §12.014, which provides the department with the authority to adopt reasonable fees to cover the cost of establishing and maintaining a registry; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The proposed amendments affect the Texas Health and Safety Code, §12.014.

§127.1. *Request for Placement of an Occupation on the Registry.*

(a)-(d) (No change.)

(e) A request under this section must be accompanied by the fee set out in §127.4 of this title (relating to Fees).

§127.4. *Fees.*

(a) The schedule of fees shall be as follows:

(1) request fee - \$500; [medical laboratory practitioner (initial application) - \$30; and]

(2) initial application - \$120; and

(3) [~~2~~] annual reapplication (any category) - \$120 [~~\$30~~].

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

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

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◆ ◆ ◆  
Chapter 129. Opticians' Registry

25 TAC §§129.1-129.5, 129.8-129.13

The Texas Department of Health (department) proposes amendments to §§129.1-129.5 and 129.8-129.13 concerning the voluntary registration and regulation of dispensing opticians. The sections cover purpose and construction; definitions; Opticians' Registry Advisory Committee; fees; application procedures and requirements for registration; renewal of registration; requirements for continuing education; change of name or address; violations, complaints, investigation of complaints, and disciplinary actions; registration of applicants with criminal backgrounds; and professional and ethical standards.

Specifically, the proposed amendments change the term advisory council to advisory committee; define advisory committee and all definitions are listed with numbers in new *Texas Register* format as required by 1 Texas Administrative Code §91.1 effective February 17, 1998; require that an official copy of the minutes be provided to the advisory committee within 30 days after approval; eliminate language regarding reimbursement for expenses because it is not applicable; allow the department to accept personal checks; eliminate references to an examination administered by the department; reduce the number of hours required for single registration from 7 to 5 and dual registration from 14 to 10; change the term license to registration; add language concerning the non-renewal of a registration if the registration has been suspended for failure to pay child support; allow the department to accept address changes via phone, mail, fax, e-mail or in person; delete the requirement of a duly executed affidavit; add language to reference the procedure for assessing administrative penalties; delete unnecessary language related to procedures for revocation, suspension, or denial of an application; and add language requiring registrants to comply with the Texas Contact Lens Prescription Act, Texas Civil Statutes, Article 4552-A, unless exempt.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications as a result of administering the sections as proposed. There will be no fiscal implications for state or local governments.

Ms. Underwood has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to protect the public by regulating opticians who choose to register with the department. There will be no effect on small businesses. There may be a minor reduction in costs to some persons who are required to comply with the rules as proposed due to a decrease in the number of classroom hours required for registration. There will be no impact on local employment.

Comments on the proposal may be submitted to Kathy Craft, Director of Programs, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, telephone (512) 834-6661. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4551-1, §5 which provides the Board of Health (board) with the authority to adopt rules to implement registration procedures; and Texas Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The proposed amendments affect the Opticians' Registry Act, Texas Civil Statutes, Article 4551-1.

§129.1. *Purpose and Construction.*

(a) (No change.)

(b) Construction. These sections cover definitions; organization, administration and operation of the ~~committee~~ [advisory council]; fees; application procedures and requirements; applicant eligibility and registration; examination; renewal of registration certificates; requirements for continuing education; name or address changes; procedures for violations, complaints, investigation of complaints, and disciplinary actions; registration of applicants with criminal backgrounds; and professional and ethical standards.

§129.2. *Definitions.*

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

(1) Act-The Opticians' Registry Act (Act), Texas Civil Statutes, Article 4551-1.

(2) Administrator-The department employee designated as the administrator of registration activities authorized by the Act.

(3) Applicant-A person who applies for registration under the Act.

(4) Board-The Texas Board of Health.

(5) Commissioner-The commissioner of the Texas Department of Health.

(6) Consumer-An individual receiving services or obtaining a product from a registered dispensing optician.

(7) Contact lens dispensing-The fabrication, ordering, mechanical adjustment, dispensing, sale, and delivery to the consumer of contact lenses prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea or evaluating the physical fit of the contact lenses, unless that action is directed or approved by a licensed physician.

(8) Contact lens prescription-A written specification by a licensed physician or optometrist for therapeutic, corrective, or cosmetic contact lenses that states the refractive power of the product and other information as required by:

(A) the physician or the Texas State Board of Medical Examiners; or

(B) the optometrist or the Texas Optometry Board.

(9) Committee - The nine member Opticians' Registry Advisory Committee.

(10) Department-The Texas Department of Health.

(11) Dispensing optician-A person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.

(12) Dual application-An application by one person as both a registered spectacle dispensing optician and a registered contact lens dispenser.

(13) Examination-A qualifying test administered to eligible applicants by the department or its designee.

(14) Registered contact lens dispenser-A person properly registered under the Act as a contact lens dispenser.

(15) Registered spectacle dispensing optician-A person properly registered under the Act as a spectacle dispensing optician.

(16) Registration certificate-A document issued by the department to a qualified person authorizing that person to represent that he or she is registered under the Act.

(17) Spectacle dispensing-The design, verification, fitting, adjustment, sale, and delivery to the consumer of fabricated and finished spectacle lenses, frames, or other ophthalmic devices, other than contact lenses, prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist. The term includes:

(A) prescription analysis and interpretation;

(B) the taking of measurements of the face, including interpupillary distances, to determine the size, shape, and specification of the spectacle lenses or frames best suited to the wearer's needs;

(C) the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating spectacles;

(D) the verification of the quality of finished spectacle lenses;

(E) the adjustment of spectacle lenses or frames to the intended wearer's face; and

(F) the adjustment, repair, replacement, reproduction, or duplication of previously prepared spectacle lenses, frames, or other specially fabricated optical devices, other than contact lenses.

(18) Spectacle prescription-A written specification by a licensed physician or optometrist for therapeutic or corrective lenses that states the refractive power of the product and other information as required by the physician or optometrist.

[~~Council - The nine member Advisory Council of the Opticians' Registry.~~]

§129.3. *Opticians' Registry Advisory Committee.*

(a) The committee. The Opticians' Registry Advisory Committee [An advisory committee] shall be appointed under and governed by this section.

~~[(1) The name of the committee shall be the Opticians' Registry Advisory Committee (committee).]~~

~~[(2) The committee is required to be established by the Texas Board of Health (board) by Texas Civil Statutes, Article 4551-1.]~~

(b)-(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

(5) Minutes of each committee meeting shall be taken by department staff.

~~[(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.]~~

~~[(A) [(B)] After approval by the committee, the minutes shall be signed by the presiding officer.~~

[(B) An official copy of the minutes shall be provided to the committee within 30 days after approval.]

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

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

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. ~~[The reports shall include an executive summary or minutes of each subcommittee meeting.]~~

(n)-(o) (No change.)

~~[(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.]~~

~~[(1) No compensatory per diem shall be paid to committee members unless required by law.]~~

~~[(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.]~~

~~[(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.]~~

~~[(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.]~~

~~[(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.]~~

#### §129.4. Fees.

(a) (No change.)

(b) Payment of fees. If paid by mail, all fees shall be submitted in the form of a personal check, certified check for

guaranteed funds or a money order made payable to the Texas Department of Health. If submitted in person, cash may be accepted by the department's cashier.

(c) (No change.)

#### §129.5. Application Procedures and Requirements for Registration.

(a) Purpose. The purpose of this section is to set out the application procedures and ~~[registration]~~ requirements ~~[of applicants]~~ for ~~[examination and]~~ registration.

(b) (No change.)

(c) Required application materials.

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

(3) An applicant shall submit documentation satisfactory to the department, that he or she has completed five ~~[seven]~~ classroom hours.

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

(C) If applying for dual registration, the applicant must have completed 10 ~~[14]~~ classroom hours offered or approved by the American Board of Opticianry or the National Contact Lens Examiners.

(D) (No change.)

(4) Proof of having passed the prescribed examination shall be attached to the application form ~~[if the applicant has already completed the examination].~~

(d) Examinations.

~~[(1) Purpose. The purpose of this subsection is to establish rules governing the procedures for examination of applicants for registration as a spectacle dispensing optician or contact lens dispenser.]~~

~~[(2) Frequency. Examinations will be administered for the department at least once each year by a designee of the department.]~~

~~[(3) Requirements.]~~

~~[(A) The administrator shall notify an applicant when all requirements for registration have been met except the taking and passing of the required examination. The department shall forward an examination registration form to each approved applicant as soon as the application has been approved.]~~

~~[(B) An applicant who wishes to take a scheduled examination must complete the examination registration form which must be received by the department with the required fee at least 30 days prior to the date of the examination. All fees shall be paid to the department if the applicant is taking the examination solely for registration purposes. The fee shall be paid to the designee of the department if the applicant is taking the examination for registration purposes and to obtain private certification.]~~

~~[(C) The examination for registration shall be a written examination approved by the department. A designee of the department shall administer and grade examinations and report to the department if the applicant has passed or failed the examination.]~~

~~[(D) If an applicant has already successfully completed the required examination, the applicant shall not be required to be reexamined, provided the applicant furnishes the department a copy of the test results indicating that the applicant passed the examination.]~~

~~[(E)]~~ An applicant who fails two successive examinations may not reapply until the applicant completes all remedial work as prescribed by the department.

~~[(4)]~~ Required examination.

(1) ~~[(A)]~~ The examination administered by the American Board of Opticianry, or its successor, is the examination for registered spectacle dispensing opticians.

(2) ~~[(B)]~~ The examination administered by the National Contact Lens Examiners, or its successor, is the examination for registered contact lens dispensers.

(e) Determining eligibility. The department shall receive and approve or disapprove all applications for registration as registered spectacle dispensing opticians or registered contact lens dispensers or both. The administrator shall be responsible for reviewing all applications.

(1) (No change.)

(2) An application for a registration shall be disapproved if the applicant has:

(A) (No change.)

~~[(B)]~~ failed to pass the examination prescribed by the department as set out in subsection (d) of this section;

~~[(B)]~~ ~~[(C)]~~ failed to or refused to properly complete or submit any application form, endorsement, or fee or deliberately presented false information on any form or document required by the department;

~~[(C)]~~ ~~[(D)]~~ violated any provision of the Act or this chapter;

~~[(D)]~~ ~~[(E)]~~ been convicted of a felony or misdemeanor as set out in §129.12 of this title (relating to Registration of Applicants With Criminal Backgrounds); or

~~[(E)]~~ ~~[(F)]~~ violated any provision of state law relating to the practice of dispensing opticians.

(3) (No change.)

(f) (No change.)

#### §129.8. *Renewal of Registration.*

(a) (No change.)

(b) General.

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

(5) The department shall not renew a registration ~~[license]~~ if renewal is prohibited by the Education Code, §57.491.

(6) The department shall not renew a registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support), as set out in §1.301 of this title (relating to Suspension of License for Failure to Pay Child Support).

(7) ~~[(6)]~~ Notices of renewal approval, disapproval, or deficiency shall be in accordance with §129.5(f) of this title (relating to Application Procedures and Requirements for Registration).

(c) Registration renewal.

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

(4) The department shall issue to a registrant who has met all requirements for renewal a renewed registration certificate ~~[card]~~ and identification card.

(5) (No change.)

(d) (No change.)

(e) Expiration of registration.

~~[(1)]~~ A person whose registration has expired may not refer to himself or herself by any of the titles listed in §129.7(g) of this title (relating to Issuance of Certificate of Registration).

~~[(2)]~~ A person who fails to renew a registration is required to surrender the registration certificate and identification card to the department after 180 days from expiration of the registration or upon demand.

#### §129.9. *Requirements for Continuing Education.*

(a)-(d) (No change.)

(e) Accrual carryover. Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of five additional clock hours may be accrued during a registration period to be applied to the next consecutive renewal period. ~~[provided; however, a]~~ A maximum of 10 additional clock hours may be accrued for dual registrants during a registration period to be applied to the next consecutive renewal period.

#### §129.10. *Change of Name or Address.*

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

~~[(c)]~~ Any change shall be submitted in writing to the administrator and include the name, old address, and new address.

(c) ~~[(d)]~~ Before any new registration certificate or identification card will be issued by the department, notification of a name change must be forwarded to the administrator and shall include ~~[a duly executed affidavit and]~~ a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name.

(d) ~~[(e)]~~ The registrant shall return any previously issued certificate or identification card and remit the appropriate replacement fee as set out in §129.4 of this title (relating to Fees).

#### §129.11. *Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.*

(a) Purpose. The purpose of this section is to set out:

~~[(1)]~~ violations and prohibited actions under the Optician's Registry Act (Act) and this chapter;

(1) ~~[(2)]~~ procedures concerning complaints alleging violations of the Act or this chapter; and

(2) ~~[(3)]~~ Texas Department of Health (department) actions against a person when violations have occurred.

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

(d) Investigation of complaints.

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

(5) If the administrator determines that there are sufficient grounds to support the complaint, the administrator may propose to deny, suspend, revoke, probate, or not renew a registration with the concurrence or ratification of the Complaints Subcommittee, if such subcommittee exists.



~~[(6) The program administrator shall determine whether the complaint fits within the category of a serious complaint affecting health or safety of clients or other persons.]~~

~~(6) [(7)] If an investigation is done, the investigator shall always attempt to contact the complainant to discuss the complaint.~~

(e) Disciplinary actions.

(1) The department may deny an application or registration renewal or suspend or revoke a registration or impose probation or administrative penalties for any violation of the Act or this chapter.

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

(8) Administrative penalties shall be assessed in accordance with the procedures set forth in the Act, §10A.

(f) (No change.)

§129.12. *Registration of Applicants with Criminal Backgrounds.*

(a) (No change.)

(b) Criminal convictions which directly relate to the occupation of dispensing opticians shall be considered by the Texas Department of Health (department) as follows.

(1) The department may suspend or revoke an existing registration or ~~[.]~~ disqualify a person from receiving a registration ~~[.]~~ or deny to a person the opportunity to be examined for a registration because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration.

(2) (No change.)

(c) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or an unwillingness ~~[a tendency]~~ for the person to be able ~~[unable]~~ to perform or to be fit ~~[unfit]~~ for registration:

(1)-(5) (No change.)

(6) other misdemeanors and felonies ~~[which indicate an inability or tendency for the person to be unable to perform as a registrant or to be unfit for registration]~~ if disciplinary action by the department will promote the intent of the Act, this chapter, and Texas Civil Statutes, Article 6252-13c;

~~[(d) Procedures for revoking, suspending, or denying a registration to a person with a criminal background shall be as follows:]~~

~~[(1) The administrator shall give written notice to the person that the department proposes to deny the application or suspend or revoke the registration in accordance with the provisions of §129.11(e) of this title (relating to Violations, Complaints, Investigations of Complaints, and Disciplinary Actions).]~~

~~[(2) If the department denies, suspends, or revokes an application or registration under this section, the administrator shall give the person written notice:]~~

~~[(A) of the reasons for the decision;]~~

~~[(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the department and its decision;]~~

~~[(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and]~~

~~[(D) of the earliest date that the person may appeal.]~~

§129.13. *Professional and Ethical Standards.*

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

(d) A registrant shall cooperate with the department by furnishing required documents or information and by responding to a request for information. [A registrant shall provide all information required by the Opticians' Registry Act (Act) or this chapter to be submitted to the department.]

(e)-(j) (No change.)

(k) Unless exempt, a registrant shall comply with the Texas Contact Lens Prescription Act, Texas Civil Statutes, Article 4552-A.

(l) A registrant may not sell, deliver, or dispense contact lenses to a patient or other consumer in this state unless the registrant receives a prescription that conforms to the requirements of the Texas Contact Lens Prescription Act, Texas Civil Statutes, Article 4552-A. The registrant must fill the prescription accurately without modification.

(m) Spectacles may be dispensed only in accordance with a spectacle prescription from a licensed physician or optometrist. This subsection does not prohibit a registrant from duplicating lenses.

This 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 17, 1998.

TRD-9811312

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 30, 1998

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



Chapter 157. Emergency Medical Services

Subchapter G. Emergency Medical Services

Trauma Systems

25 TAC §157.131

The Texas Department of Health (department) proposes new §157.131 concerning the requirements for designation of trauma stabilization (Level V) facilities. This section delineates the process for application and the essential criteria which must be met for a facility to be designated as a Level V trauma facility by the department.

House Bill 1407, 75th Legislature, 1997, amended Health and Safety Code, Chapter 773 and, as a result, allows the department to designate Level V trauma facilities according to rules adopted by the Texas Board of Health. Injuries are the major cause of death in ages birth to 44. Legislation was passed in 1989 directing the department to develop an emergency medical services (EMS)/trauma system, to include the designation of trauma facilities, to reduce injury morbidity and mortality. The department has been designating trauma facilities at four levels since 1993. The Level V facility will be integrated into the current Texas trauma system structure to provide quality care to injury victims in areas where no other resources are available.

Gene Weatherall, Chief, Bureau of Emergency Management, has determined that for each year of the first five years

the section as proposed is in effect, there will be no fiscal implications to local governments as a result of administering and enforcing this section as proposed. There will be a fiscal impact on applicants in that a proposed fee will be charged, however the amount proposed will cover the department costs of designating the facilities, therefore, the net effect on state government will be zero.

Mr. Weatherall has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated is the assurance that adequate trauma care is available to the citizens of Texas. There will be no effect on small businesses, are no anticipated economic costs to persons who are required to comply with the section as proposed, and there is no impact on local employment.

Comments on the proposal may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, 512/834-6740. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Health and Safety Code, §773.115, which provides the Texas Board of Health (board) with the authority to adopt rules for the development of an EMS and trauma care system; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new section affects the Health and Safety Code, Chapter 773.

§157.131. Requirements for Designation of Trauma Stabilization Facilities.

(a) The Bureau of Emergency Management (bureau) shall recommend to the commissioner of health (commissioner) the designation of trauma stabilization (level V) facilities.

(1) Level V facilities provide resuscitation and prompt transport of all major and severe trauma patients to a higher level trauma facility.

(2) Level V facilities have no in-patient or observation beds.

(3) Level V facilities are not located within 30 miles or 30 minutes ground transport time of a higher designated trauma facility unless such a facility would improve appropriate access to and quality of trauma patient care as confirmed by the regional advisory council (RAC).

(b) The designation process shall consist of three phases.

(1) The first phase is the application phase which begins with completing and submitting to the bureau an application and nonrefundable fee for designation as a trauma facility and ends when the bureau recommends a site survey (survey) or recommends designation to the commissioner.

(2) The second phase is the review phase which begins with the survey, if required, and ends with a bureau recommendation to the commissioner to designate the facility.

(3) The third phase begins with the commissioner reviewing the recommendation and ends with his/her final decision. This phase also includes an appeal procedure for the denial of designation in accordance with the Texas Department of Health (department) formal hearing procedures as described in Chapter 1 of this title (relating to Texas Board of Health).

(c) A secondary review may be requested by an applicant if it does not agree with a bureau request for specific corrective action(s) prior to recommending designation.

(d) The bureau may provide technical assistance to all applicants throughout the three phases of the designation process for the purpose of answering questions and clarifying the process.

(e) The bureau's analysis of submitted application materials, which may result in recommendations for corrective action when deficiencies are noted, shall include a review of:

(1) the evidence of participation in system planning;

(2) the completeness of the application materials submitted; and

(3) the applicant's self-study for comparison with the criteria.

(f) When the application phase results in a bureau requirement for a survey, the bureau shall notify the applicant as follows.

(1) The applicant shall contract with an approved non-department surveyor.

(2) The applicant shall notify the bureau of the date of the planned survey and composition of the survey team.

(3) The applicant shall be responsible for any costs associated with the survey.

(4) The bureau may appoint an observer to accompany the survey team. In this event, the cost for the observer shall be borne by the bureau.

(g) Applicants shall be surveyed by a department representative, registered nurse or licensed physician. A second surveyor may be requested by the applicant or the bureau. Non-department surveyors must meet the following criteria:

(1) have at least three years experience in the care of trauma patients;

(2) be currently employed in the coordination of care for trauma patients;

(3) have direct experience in the preparation for and successful completion of trauma facility verification/designation;

(4) have successfully completed the department Trauma Facility Site Surveyor Course;

(5) have current credentials of Trauma Nurse Core Course (TNCC) for nurses or Advanced Trauma Life Support (ATLS) for physicians;

(6) have successfully completed a site survey internship with department staff; and

(7) except department staff, come from a public health region outside the applicant's location and at least 100 miles from the applicant.

(h) The survey team shall evaluate the quality of an applicant's compliance with the requirements set forth in the criteria, by:

(1) reviewing medical records, staff rosters and schedules, performance improvement committee meeting minutes and other documents relevant to trauma care;

(2) reviewing equipment and the physical plant; and

(3) conducting interviews with applicant personnel.

(i) Findings of the survey team shall be forwarded to the bureau within 90 days.

(1) The bureau shall review the findings for compliance with the criteria.

(2) A recommendation for designation shall be made to the commissioner based on compliance with the criteria.

(3) In the event there is a problem area in which an applicant does not comply with the criteria, the bureau shall notify the applicant of deficiencies and outline corrective action.

(A) The applicant shall submit a report to the bureau which outlines the corrective action taken. The bureau may require a second survey to insure compliance with the criteria. If the applicant and/or bureau report substantiates action that brings the applicant into compliance with the criteria, the bureau shall recommend designation to the commissioner.

(B) If the applicant disagrees that there is need for corrective action, the bureau shall refer the complete file to the trauma subcommittee of the emergency health care advisory committee for review.

(C) If the trauma subcommittee disagrees with the bureau recommendation for corrective action, the records shall be referred to the deputy commissioner of health for review.

(j) The bureau shall provide a copy of the survey report, for surveys conducted by department staff, and results to the applicant.

(k) At the end of the secondary review and final phases of the designation process, if an applicant disagrees with the bureau recommendations, opportunity for an appeal in accordance with the department formal hearing procedures as described in Chapter 1 of this title shall be offered.

(l) The department may grant an exception to this section if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(m) The applicant shall have the right to withdraw its application at any time prior to being awarded trauma facility designation by the department.

(n) If the commissioner concurs with the bureau recommendation, the applicant shall receive a certificate of designation for three years.

(o) Designation is granted for a period of up to three years and it shall be necessary to repeat the designation process as described in this section before the expiration date in order to prevent a lapse of designation.

(p) A designated trauma facility shall:

(1) notify the department and the RAC within five days if temporarily unable to comply with designation standards;

(2) notify the department and the RAC if it chooses to no longer provide trauma services commensurate with its designation level with at least 30 days notice;

(3) comply with the provisions within §§157.121 - 157.131 (relating to Emergency Medical Services Trauma Systems), all current state and system standards as described in this chapter, and all policies, protocols, and procedures as set forth in the system plan;

(4) continue its commitment to provide the resources, personnel, equipment, and response as required by its designation level; and

(5) participate in the state trauma registry as described in §157.129 of this title (relating to State Trauma Registry).

(g) A facility may not use the terms "trauma facility", "trauma center", or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility according to the process described in this section. This subsection of this section also applies to facilities whose designation has lapsed.

(r) A trauma facility shall not advertise or publicly assert in any manner that its trauma facility designation affects its care capabilities for non-trauma patients or that its trauma facility designation should influence the referral of non-trauma patients.

(s) The bureau shall have the right to review, inspect, evaluate, and audit all trauma patient records, trauma performance improvement committee minutes, and other documents relevant to trauma care in any designated trauma facility at any time to verify compliance with criteria. The bureau shall maintain confidentiality of such records to the extent authorized by the Open Records Act, Texas Civil Statutes, Article 6252-17a. Such inspections shall be scheduled by the bureau when appropriate.

(t) The fee for application as a Level V trauma facility shall be \$750.

(u) Trauma stabilization (Level V) facility criteria.

Figure: 25 TAC §157.131(u)

This 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 17, 1998.

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Susan K. Steeg

General Counsel

Texas Department of Health

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



## Chapter 229. Food and Drug

### Subchapter X. Licensure of Device Distributors and Manufacturers

#### 25 TAC §§229.432-229.433, 229.441, 229.443

The Texas Department of Health (department) proposes amendments to §§229.432 - 229.433, 229.441, and 229.443, concerning the licensure of device distributors and manufacturers. Specifically, the sections cover applicable laws and regulations; definitions; minimum standards for licensure; and enforcement and penalties. Section 229.432 will adopt by reference the U.S. Food and Drug Administration's amended 21 Code of Federal Regulations (CFR), Part 820, entitled "Quality System Regulation", as well as new 21 CFR, Part 897, entitled "Cigarettes and Smokeless Tobacco". Section 229.433 will amend the definitions of "distributor" and "manufacturer" to provide clarification of statutory intent and all definitions are numbered in new *Texas Register* format to comply with 1

Texas Administrative Code, §91.1, effective February 17, 1998. Section 229.441 will clarify and define minimum standards for licensure of device distributors and manufacturers. Section 229.443 will clarify the department's inspection authority with respect to access to records.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Culmo has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit will be clarification of minimum standards for licensure of device distributors and manufacturers. There is no effect on small businesses. There is no anticipated cost to persons who may be required to comply with the sections as proposed. There is no anticipated impact on local government.

Comments on the proposed amendments may be submitted to Thomas E. Brinck, Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect Health and Safety Code, Chapter 431. §229.432. *Applicable Laws and Regulations.*

(a) The Texas Department of Health (department) adopts by reference the following laws and regulations:

(1)-(5) (No change.)

(6) ~~[(7)]~~ 21 CFR, Part 814, Premarket Approval of Medical Devices, as amended; ~~[and]~~

(7) ~~[(6)]~~ 21 CFR, Part 820, Quality System Regulation [Good Manufacturing Practice for Medical Devices: General], as amended;

(8) 21 CFR, Part 897, Cigarettes and Smokeless Tobacco, as amended; and

(9) ~~[(8)]~~ 21 CFR, Subchapter J - Radiological Health, as amended.

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

§229.433. *Definitions.*

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

(1) Act - The Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

(2) Adulterated Device [Adulteration] - Has the meaning specified ~~[given]~~ in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, §431.111 ~~[as interpreted in the rules of the Texas Board of Health (board) and judicial decision].~~

(3) Advertising - All representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(4) Authorized agent - An employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

(5) Board - The Texas Board of Health.

(6) Commissioner - The Commissioner of Health.

(7) Department - The Texas Department of Health.

(8) Device - An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolism for the achievement of any of its principal intended purposes.

(9) Distributor - A person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user. The term includes an importer or an own-label distributor. The term does not include[;]

~~[(A)] a person who repackages a finished device or who otherwise changes the container, wrapper, or labeling of the finished device or the finished device package.[;]~~

~~[(B) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;]~~

~~[(C) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;]~~

~~[(D) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device for emergency medical reasons. For purposes of this definition, "emergency medical reasons" includes transfers of prescription devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;]~~

~~[(E) the sale, purchase, or trade of a device, an offer to sell, purchase, or trade a device, or the dispensing of a device pursuant to a prescription; or]~~

~~[(F) the distribution of device samples by manufacturers' representatives or distributors' representatives.]~~

(10) Electronic product radiation - Any ionizing or nonionizing electromagnetic or particulate radiation, or any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic

product as the result of the operation of an electronic circuit in such product.

(11) Finished device - A device, or any accessory to a device, which is suitable for use, whether or not packaged or labeled for commercial distribution.

(12) Health authority - A physician designated to administer state and local laws relating to public health.

(13) Importer - Any person who initially distributes a device imported into the United States.

(14) Ionizing radiation - Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(15) Labeling - All labels and other written, printed, or graphic matter:

(A) upon any article or any of its containers or wrappers; or

(B) accompanying such article.

(16) Manufacture - The making by chemical, physical, biological, or other procedures of any article that meets the definition of device. The term includes the following activities:

(A) repackaging or otherwise changing the container, wrapper, or labeling of any device package in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer; or

~~{(B) initial distribution of imported devices; or}~~

~~{(B) [(C)] initiation of specifications for devices that are manufactured by a second party for subsequent commercial distribution by the person initiating specifications.~~

(17) Manufacturer - A person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include[;]

~~{(A) a person who only distributes a finished device.};~~

~~{(B) the manufacture of raw materials or components to be used in the manufacture or assembly of a device who would otherwise not be required to license under the provisions of these sections;}~~

~~{(C) the manufacture of general purpose articles such as chemical reagents or laboratory equipment whose uses are generally known by persons trained in their use and which are not labeled or promoted for medical uses;}~~

~~{(D) the manufacture or otherwise altering of devices by licensed practitioners, including physicians, dentists, and optometrists solely for use in their practice; or}~~

~~{(E) the manufacture, preparation, propagation, compounding, or processing of devices used solely in research, teaching, or analysis and which are not introduced into commercial distribution.}~~

(18) Misbranded Device [Misbranding] - Has the meaning specified [given] in the Texas Food, Drug, and Cosmetic Act,

Health and Safety Code, Chapter 431, §431.112 [as interpreted in the rules of the board and judicial decision].

(19) Person - Includes individual, partnership, corporation, and association.

(20) Place of business - Each location at which a device is manufactured or held for distribution.

(21) Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(22) Radioactive material - Any material (solid, liquid, or gas) that emits radiation spontaneously.

(23) Reconditioning - Any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards as specified [Has the meaning given] in the Texas Food, Drug, Device, and Cosmetic Salvage Act, Health and Safety Code, Chapter 432, §432.003, as interpreted in the rules of the board in §229.192 of this title (relating to Definitions) [and judicial decision].

(24) Restricted device - A device subject to certain controls related to sale, distribution, or use as specified [Has the meaning given] in the Federal Food, Drug, and Cosmetic Act, as amended, §520(e)(1).

§229.441. *Minimum Standards for Licensure.*

(a) Minimum requirements. All distributors or manufacturers of devices engaged in the design, manufacture, packaging, labeling, storage, installation, and servicing [manufacturing, packing, storage, or installation] of devices must comply with the minimum standards of this section in addition to the statutory requirements contained in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act). For the purpose of this section, the policies described in the United States Food and Drug Administration's (FDA's) Compliance Policy Guides as they apply to devices shall be the policies of the Texas Department of Health (department).

(b) (No change.)

(c) Good manufacturing practices. Device distributors or manufacturers engaged in the design, manufacture, packaging, labeling, storage, installation, and servicing [manufacturing, packing, storage, or installation] of finished devices shall be in compliance with the applicable requirements of 21 CFR, Part 820, titled "Quality System Regulation [Good Manufacturing Practice For Medical Devices: General]." The requirements in this part govern the methods used in, and the facilities and controls used for, the design, manufacture, packaging, labeling, storage, installation, and servicing [This regulation sets forth the current good manufacturing practices for methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation] of all finished devices intended for human use.

(d) Buildings and facilities.

(1) All manufacturing, assembling, packaging, packing, holding, testing, or labeling of devices by manufacturers shall take place in buildings and facilities described in 21 CFR, Part 820, Subpart L [C], titled "Handling, Storage, Distribution, and Installation [Buildings]."

(2) No manufacturing, assembling, packaging, packing, holding, testing, or labeling operations of devices by manufacturers or distributors shall be conducted in any personal residence.

(3) Any place of business used by a distributor to store, warehouse, hold, offer, transport, or display devices shall:

(A) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(B) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, and space;

(C) have a quarantine area for storage of devices that are outdated, damaged, deteriorated, misbranded, or adulterated;

(D) be maintained in a clean and orderly condition;  
and

(E) be free from infestation by insects, rodents, birds, or vermin of any kind.

(e) Storage of devices. All devices stored by distributors shall be held at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such devices.

(f) ~~[(e)]~~ Device labeling. Devices distributed by device distributors or manufacturers shall meet the labeling requirements of the Act and 21 CFR, Part 801, titled "Labeling."

(g) ~~[(f)]~~ Device labeling exemptions. Device labeling or packaging exemptions adopted under the Federal Food, Drug, and Cosmetic Act, as amended, shall apply to devices in Texas except insofar as modified or rejected by rules of the Texas Board of Health (board).

(h) ~~[(g)]~~ Reconditioned devices. Reconditioned devices must comply with the provisions of the Act and these sections and are subject to the provisions of the Texas Food, Drug, Device and Cosmetic Salvage Act, Health and Safety Code, Chapter 432.

(i) ~~[(h)]~~ Medical device reporting. Device distributors or manufacturers shall meet the applicable medical device reporting requirements of 21 CFR, Part 803, titled "Medical Device Reporting" or 21 CFR, Part 804, titled "Medical Device Distributor Reporting."

(j) ~~[(i)]~~ Radiation emitting devices. Devices which emit electronic product radiation and are distributed by device distributors or manufacturers shall meet the applicable requirements of the Act and 21 CFR, Subchapter J, titled "Radiological Health."

§229.443. *Enforcement and Penalties.*

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

(c) Access to records. A person who is required to maintain records referenced in these sections or under the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or §519 or §520(g) of the Federal Food, Drug, and Cosmetic Act or a person who is in charge or custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times access to and to copy and verify the records.

(d) (No change.)

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

Filed with the Office of the Secretary of State on July 17, 1998.

TRD-9811311

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 30, 1998

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



## Chapter 289. Radiation Control

### Subchapter C. Texas Regulations for Control of Radiation

#### 25 TAC §289.101

The Texas Department of Health (department) proposes an amendment to §289.101 concerning a memorandum of understanding between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC) regarding radiation control functions. The amendment to §289.101 defines the respective duties of the agencies in the regulation of these activities, provides a consistent approach to avoid duplication, delineates areas of separate jurisdiction, and provides for dispute resolution. The revision reflects the transfer of jurisdiction for the regulation of uranium activities from the TNRCC to the TDH.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Mrs. McBurney also has determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be to clarify each agency's responsibilities in the regulation of radioactive substances. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public hearing to accept oral comments will be held at 9:30 a.m., Wednesday, August 19, 1998, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The amendment is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The amendment affects Health and Safety Code, Chapter 401.

§289.101. *Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.*

(a) (No change.)

(b) Definitions. The words and terms used in this chapter shall have the same meaning as defined in the code, §401.003, unless the context clearly indicates otherwise.

(c) [(b)] Jurisdiction.

(1) In accordance with §401.412 of the code, the Texas Natural Resource Conservation Commission (TNRCC) has primary jurisdiction to regulate and issue licenses for the disposal of radioactive substances, except for by-product material, as defined in the code, §401.003 and for naturally occurring radioactive material (NORM) originating from oil and gas production and exploration activities, defined as "oil and gas NORM waste" in the code, §401.003 [(27) of the code. For purposes of this MOU, disposal means isolation or removal of radioactive substances from mankind's environment without intent to retrieve those radioactive substances later. The term does not include emissions and discharges in accordance with §289.202 of this title (relating to Standards for Protection Against Radiation) of the Texas Department of Health (TDH). "Radioactive substance" includes by-product material, radioactive material, radioactive waste, source material, sources of radiation, and special nuclear material as are defined by §401.003 of the code. In accordance with §401.412 of the code, the TNRCC also has primary jurisdiction to regulate and issue licenses for source material recovery and processing, including the disposal of by-product material, as defined in §401.003(3)(B) of the code].

(2) The TDH has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material, including [excluding] the recovery and processing of source material, and processing and disposal of by-product material as defined in the code, §401.003 [(3)(B) of the code, and the disposal of radioactive substances]. The TDH has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in the code, §401.003(9) of the code]. The code, [Section] §401.106, [of the code] gives the TDH the authority, through rulemaking by the Texas Board of Health, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

[(3) The receipt, storage, and/or processing of radioactive substances received by a TNRCC licensee at a radioactive substance disposal facility for the explicit purpose of disposal at that facility shall be regulated by the TNRCC. All other uses of radioactive material (e.g., well logging, industrial radiography, gauging devices, etc.) at a TNRCC-licensed radioactive substance disposal facility shall be regulated by the TDH.]

[(4) Processing of radioactive substances at a TNRCC-licensed radioactive substance disposal facility by persons other than the TNRCC licensee shall be authorized only by the TDH under a license or under reciprocal recognition of an out-of-state license and shall be in accordance with the jurisdiction of the TDH.]

[(5) The receipt, storage, and processing of radioactive material at TDH-licensed facilities whose primary activity is not disposal of radioactive substances but which are also licensed by the TNRCC for disposal of radioactive substances shall be regulated by the TDH.]

(d) Responsibilities.

(1) The receipt, storage, and/or processing of radioactive substances received by a TNRCC licensee at a commercial radioactive substance disposal facility for the explicit purpose of disposal at that facility shall be regulated by the TNRCC. All other uses of radioactive material (e.g., well logging, industrial radiography, gauging devices,

etc.) at a TNRCC-licensed radioactive substance disposal facility shall be regulated by the TDH.

(2) Processing of radioactive substances at a TNRCC-licensed commercial radioactive substance disposal facility by persons other than the TNRCC licensee shall be authorized only by the TDH under a license or under reciprocal recognition of an out-of-state license and shall be in accordance with the jurisdiction of the TDH.

(3) The receipt, storage, and processing of radioactive material at TDH-licensed facilities whose primary activity is not disposal of radioactive substances but which are also licensed by the TNRCC for on-site non-commercial disposal of radioactive substances shall be regulated by the TDH.

(e) [(e)] Relationship with the United States Nuclear Regulatory Commission (NRC) and the Texas Radiation Advisory Board (TRAB) regarding rulemaking. The TNRCC and the TDH agree to work together to ensure that complete regulation is maintained for sources, uses, and users of radiation. As appropriate, the TDH and the TNRCC agree to coordinate rulemaking activities between the two agencies and the TRAB to ensure consistency of regulation. Each agency agrees to coordinate rulemaking activities which pertain to the requirements of the Agreement between the State of Texas and the NRC, as amended, and to ensure the compatibility of rules and guidelines with federal regulatory programs. Each agency agrees to coordinate on providing information on any proposed legislation relating to the regulation of radioactive substances.

(f) In situ uranium mining.

(1) The TDH has primary responsibility for licensing and enforcement activities for above ground process plant facilities excluding wellhead assemblies, well monitoring equipment, and preinjection equipment associated with waste disposal wells. The TDH will review the applicant's design, construction, operation, record keeping, maintenance, and decommissioning and closure plans to ensure that they meet TDH requirements. The TDH has primary responsibility for regulation of surface reclamation, decontamination, and decommissioning.

(2) The TNRCC has primary responsibility for permitting and enforcement activities for all wells permitted by the TNRCC underground injection control program, wellhead assemblies, and groundwater monitoring equipment. The TNRCC will review the applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet the TNRCC requirements. The TNRCC is also responsible for reviewing the design and operations plans for groundwater monitoring, and excursion detection and response, in consultation with the TDH. The TNRCC is responsible for regulation of groundwater monitoring, excursion detection and response, and groundwater restoration. Preinjection equipment associated with waste disposal wells (tanks, filters, pumping stations, etc.) is the primary permitting and enforcement responsibility of the TNRCC.

(3) The TDH and the TNRCC are responsible for the review, permitting, licensing, and enforcement activities for fluid holding ponds. The TDH and the TNRCC will review the applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet the respective agency requirements and license or permit conditions. The TDH and the TNRCC may coordinate inspections, sampling programs, and enforcement actions. Once a TNRCC permit for waste disposal wells associated with fluid holding ponds has been revoked, the TDH is responsible for enforcement activities for fluid holding ponds.

(4) Each agency will encourage applicants to attend a preapplication meeting with representatives from each agency in attendance.

(5) Applications and other information required by the TNRCC will be accepted as part of the application to the TDH. The TDH will inform the TNRCC in writing of any application for a radioactive material license for in situ uranium mining. A copy of the application and subsequent information bearing on the technical merit of the applications or other substantive issues received by either agency will be forwarded to the other agency, if requested.

(6) TDH licenses will contain a provision that licensees must comply with TNRCC permit requirements. TNRCC permits will contain a provision that permittees must comply with TDH license requirements.

(7) The TNRCC will require reporting of all spills. The TDH will require reporting of spills in accordance with §289.260(h) of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities).

(8) The TNRCC regulates discharges into waters in the state.

(9) The TDH has primary responsibility for enforcement of the conditions of its license and rules. The TNRCC has primary responsibility for enforcement of the conditions of its permits and rules. Each agency will refer to the other agency any complaints received that are the primary responsibility of the other agency. When deemed appropriate by both agencies, the TNRCC and the TDH may jointly enforce permit and license terms and conditions, and may make joint inspections and cooperate on enforcement actions. Nothing herein shall preclude either agency from undertaking individual enforcement or legal actions.

(10) Requirements for financial security for decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive materials of the below and above ground site to specified radiological and chemical levels will be established jointly by the TNRCC and the TDH. Posting of financial security with the TDH will include funds for groundwater restoration as agreed with the TNRCC. The TNRCC will require financial assurance for plugging and abandonment of injection and monitor wells associated with TNRCC underground injection control permits.

(11) In the event that financial security or assurances deposited in the Radiation and Perpetual Care Fund as provided herein are required to complete decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, groundwater restoration, and disposal of radiation material, the TDH, in agreement with the TNRCC, may enter into contracts to accomplish these activities. Payment for such contract services may be made from the Radiation and Perpetual Care Fund upon order of the TDH when the contract terms are satisfactorily completed.

(12) The TDH will specify in its licenses the parameters to be met in surface reclamation, decontamination, and decommissioning.

(g) ~~(f)~~ Emergency preparedness.

(1) The State of Texas is required by federal laws and regulations to have trained personnel always available for emergency response training, drills, exercises, and actual emergency response at fixed nuclear facilities. The code, [Section] §401.066, [of the code] requires the TDH to implement these activities.

(2) The TDH and the TNRCC will coordinate personnel availability for emergency planning and response activities. Each agency is authorized to collect an annual fee from the operators of fixed nuclear facilities in the state for expenses arising from emergency response activities, including training.

(3) The TDH will inform the TNRCC in a timely manner of all required exercises, drills, and training. All [The TNRCC will ensure that all] technical personnel who work in the radiation program and are assigned to the emergency response team shall attend appropriate [the] emergency response training coordinated by the TDH. The TNRCC shall notify the TDH of changes in the employment status of all [the appropriate] radiation personnel assigned to the emergency response team. In the event of an emergency, the appropriate TDH and TNRCC radiation staff will be available for emergency response under the direction of the TDH staff and in accordance with Annex D of the State of Texas Emergency Management Plan.

(h) ~~(e)~~ Management of radioactive wastewaters.

(1) The TNRCC is the state agency having the jurisdiction in accordance with the Texas Water Code, Chapter 26, for the discharge of any waste or wastewaters, including radioactive wastewaters, into or adjacent to waters in the state, except for those wastes regulated by the Railroad Commission of Texas. No such discharge is allowed unless authorized by the TNRCC or by another state agency having jurisdiction over the activity. The TNRCC has responsibility for issuance of permits and for enforcement of the terms and conditions of permits, rules, and/or orders which concern the treatment and discharge of radioactive wastewaters.

(2) The TNRCC shall consult with the TDH with regard to regulation and management of radioactive wastewaters and may not adopt any rules or engage in any management activities that are in conflict with state or federal laws and rules relating to regulation of radioactive wastewaters. The TNRCC shall notify the TDH, Bureau of Radiation Control, within 90 days of receipt of an administratively complete application, [when an application is received] for a treatment and/or disposal permit for radioactive wastewaters. The TNRCC shall provide the TDH with a copy of the wastewater treatment and/or disposal permit application within 90 days of receipt of an administratively complete application [during the technical review]. Within 30 days of receipt of a proposed permit, the [The] TDH shall provide the TNRCC with the appropriate permit limits for the radioactive component of wastewater discharges and cumulative limits for disposal sites, if land application is contemplated by the application. No separate license from the TDH shall be required to authorize that discharge. The TDH may provide the TNRCC with other suggestions related to management of radioactive wastewaters.

(3) TDH-licensed [TDH licenses regarding] facilities requiring a wastewater permit shall contain a provision that licensees must comply with the TNRCC permit requirements. TNRCC permits governing facilities requiring a radioactive materials license from the TDH shall contain a provision that permittees must comply with TDH license requirements.

(i) ~~(f)~~ Financial security instruments. The TNRCC will perform periodic reviews [review] and evaluate the financial security instruments for licensed radioactive waste [substance] disposal sites and non-oil and gas NORM waste disposal [uranium recovery] facilities in accordance with its jurisdiction. The TDH will perform periodic reviews [review] and evaluate the financial security instruments for licenses in accordance with its jurisdiction. The radiation and perpetual care fund will be available for use by both agencies for use [receipt] of financial security as appropriate.



(j) ~~[(g)]~~ Low-level waste health surveillance survey. In accordance with the code, §402.058 [of the code], the TDH and the TNRCC agree to coordinate efforts, as needed, in conjunction with the Texas Low-Level Radioactive Waste Disposal Authority and the local public health officials, in the development of a health surveillance survey for the population in the vicinity of a radioactive waste disposal site.

(k) ~~[(h)]~~ Dosimetry program and meter calibration. The TDH may provide personnel monitoring services, thermoluminescent dosimeters for environmental monitoring, and radiation survey instrument calibration for TNRCC personnel in the radiation program in accordance with an approved contract for those services. ~~[The TDH and the TNRCC may renegotiate this contract each biennium.]~~

(l) ~~[(i)]~~ Mutual assistance. Each agency may request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for performing close-out surveys, training, environmental monitoring, technical reviews, financial assurance information, and technical support at contested hearings or other project information. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities, in accordance with an approved interagency contract when applicable.

(m) ~~[(j)]~~ Maintenance of files on known disposal sites and contaminated facilities. The TDH agrees to assist the TNRCC in maintaining files on known locations in the state [State] at which radioactive material has been disposed of and at which soil and facilities are contaminated, and in maintaining files that contain information on inspection reports related to these locations. Each agency agrees to maintain files referred to in this subsection at the location of the jurisdictional agency [of sites and facilities regulated in accordance with its respective jurisdictions].

(n) ~~[(k)]~~ Relationship with other Memoranda of Understanding ~~[memoranda of understanding]~~. This MOU supersedes those found at ~~[\$289.123 of this title (relating to Licensing of Uranium Recovery Facilities), §289.125 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), §289.81 of this title (relating to Memorandum of Understanding on In Situ Uranium Mining between the Texas Department of Health and the Texas Department of Water Resources), 30 Texas Administrative Code §336.11, relating to Appendix A, and the Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control [; and 30 TAC §305.524(2) (Adoption of Memoranda of Understanding by Reference)]~~.

(o) ~~[(l)]~~ Radioactive substances exempted or authorized for release ~~[released]~~ for unrestricted use. When proposing an exemption, the TDH will coordinate with the TNRCC, so that the TNRCC may develop a compatible disposal requirement, if applicable. The TNRCC, in cooperation with the TDH, will analyze the long-term aspects of disposal to ensure that the doses are maintained as low as reasonably achievable (ALARA) and below the dose limits for unrestricted release. Once a source of radiation is exempted from regulation by the Texas Board of Health in accordance with the code, §401.106 [of the code], or meets release criteria for unrestricted use in accordance with the provisions of the *Texas Regulations for Control of Radiation*, its disposal as a radioactive substance is not subject to further regulation [as a radioactive substance] by the TNRCC.

(p) ~~[(m)]~~ Miscellaneous.

(1) The TNRCC and the TDH agree to revise their respective rules and procedures as needed to implement this MOU.

(2) Agency representatives shall meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies.

(3) Nothing in this MOU shall be construed to reduce the statutory jurisdiction of either agency.

(4) If any provision of this MOU is held to be invalid, the remaining provisions shall not be affected thereby.

(q) ~~[(n)]~~ Effective date. This amended MOU will take effect when signed by both agencies and remain in effect until rescinded by ~~[formal action of]~~ either agency by board or commission action taken in accordance with the terminating agency's procedures.

(r) Dispute resolution. The parties to this MOU agree to submit any disputes and other matters in question between the TNRCC and TDH that arise out of or are related to this MOU to mediation before commencement of any suit. The parties further hereby agree that this provision is not a waiver of either of the sovereign immunity of the TNRCC or the TDH.

This 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 17, 1998.

TRD-9811308

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 30, 1998

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

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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 21. Trade Practices

##### Subchapter C. Unfair Claims Settlement Practices

###### 28 TAC §21.202, §21.203

The Texas Department of Insurance proposes amendments to §21.202 and §21.203, relating to unfair claims settlement practices. The amendments are necessary to provide clear definitions of terms, and to provide clarification and conformity with provisions and requirements of Subchapter Q, Chapter 21, of this title, relating to complaint records to be maintained by insurers for all complaints received. Amendments to §21.202 provide amended definitions for "complaint" and "insurer," and a new definition for "written communication." The definition for "insurer" is changed to remove the reference to health maintenance organizations. The HMO reference is removed because the Insurance Code, Article 20A.12, as amended by the 75th Legislature, ch. 1026, §11, as well as §11.205 of this title (relating to Documents to be Available During Examinations), expressly and specifically provide for complaint record maintenance by HMOs. Amendments to §21.203 provide that failure to maintain a complete record of complaints relating to claims in substantial compliance with the provisions of new §21.2504 is an unfair claim settlement practice. Provisions of new §§21.2501 – 21.2507, published elsewhere in this issue of the *Texas Register*

ter, address maintenance requirements for the comprehensive complaint record to be maintained by all insurers.

Mary Keller, senior associate commissioner for the legal and compliance activity of the Texas Department of Insurance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Ms. Keller also has determined that there will be no effect on local employment or the local economy.

Ms. Keller also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administration and enforcement of the proposed amendments will be the more efficient administrative regulation of insurance licensees, and the more effective utilization of public resources in obtaining data that is essential to regulation with respect to claims processing and complaints resolution. The amendments will help assure that complaints relating to claim settlement are maintained consistent with requirements for all complaints and that the maintenance record captures minimum required information for adequate complaint record maintenance. Such maintenance will provide the additional benefit that insurers will be better able to evaluate customer satisfaction and thereby improve the services provided to persons who are benefit recipients under contracts issued by insurers.

Ms. Keller also has determined that for the first year the proposed amendments are in effect, there is no compliance cost resulting from the amendment to these sections to an insurer complying with the amended sections. Rather, the cost of complying with the complaint record maintenance provisions referenced in the amendment to §21.203 is determined by provisions of proposed new §§21.2501-21.2507 of this title, and set out in the cost benefit note for those proposed new sections. Provisions of proposed new §§21.2501-21.2507 are published elsewhere in this issue of the *Texas Register*. Those provisions address record maintenance for all complaints, including complaints relating to claims and claims settlement.

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 and Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Mary Keller, Senior Associate Commissioner for Legal and Compliance, MC 110-1A, P.O. Box 149104, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The proposed clarifying and conforming amendments are proposed pursuant to the Insurance Code, Articles 21.21-2 and 1.03A, and the Government Code, §2001.004. The Insurance Code, Article 21.21-2, Sec. 8, provides that the commissioner is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of the article, and in augmentation of the article. Article 1.03A provides that the commissioner may adopt rules for the conduct and execution of the duties and function of the department only as authorized by a statute. The Government Code, §2001.004 authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribes the procedure for adoption of rules by a state administrative agency.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code, Article 21.21-2.

§21.202. *Definitions.*

The following words or phrases, as used in these regulations, shall have the meanings placed opposite them unless the explicit wording of a regulation shall otherwise direct.

(1) Business day-A day other than a Saturday, Sunday, or holiday recognized by this state.

(2) Claim-A request or demand reduced to writing and filed by a Texas resident with an insurer for payment of funds or the providing of services under the terms of a policy, certificate, or binder of insurance.

(3) Claimant-A person making or having made a claim.

(4) Complaint-Any written communication, not solicited by an insurer, primarily expressing a grievance relating to an unfair claims settlement practice as defined in §21.203 of this title (relating to Unfair Claims Settlement Practices). For purposes of this subchapter, any written communication to an insurer by the same person which relates to the same claim, issue or question and requests or demands the same kind of relief and which arises out of the same transaction or transactions is considered to be part of the same complaint. A complaint is not a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding and/or supplying the appropriate information to the satisfaction of the person submitting the written communication, as applicable.

(5) First-party coverage-Benefits and other rights provided by an insurance contract to an insured.

(6) Insurer-Stock and mutual life, health, accident, fire, casualty, fire and casualty, hail, storm, title, and mortgage guarantee companies; mutual assessment companies; local mutual aid associations; local mutual burial associations; statewide mutual assessment companies; stipulated premium companies; fraternal benefit societies; group hospital service organizations; county mutual insurance companies; Lloyds; reciprocal or interinsurance exchanges; ~~health maintenance organizations operating under the Insurance Code, Chapter 20A, for claims made by enrollees for reimbursement of payments for emergency and out-of-area covered services];~~ and farm mutual insurance companies.

(7) Policyholder-The owner of a policy, certificate, or binder of insurance, and any insured, named insured, or obligee under a bond.

(8) Third-party coverage-Benefits and other rights provided by an insurance contract to any person other than the insured.

(9) Written communication-Any communication that is documented by publication or otherwise being written onto a medium which is capable at the point of receipt of being viewed, stored, retrieved and reproduced by the recipient without any transcription. Such communication expressly includes, but is not limited to, facsimile transmissions and electronic mail transmissions.

§21.203. *Unfair Claim Settlement Practices.*

No insurer shall engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing any of the following:

(1)-(5) (No change)

(6) failure of any insurer to maintain in substantial compliance with §21.2504 of this title (relating to Complaint Record;

Required Elements; Explanation and Instructions), a complete record of all complaints, as that term is defined in §21.202(4) of this title (relating to Definitions), which it has received during the preceding three years or since the date of its most recent financial [last] examination by the commissioner of insurance, whichever time is shorter. For purposes of this section, "substantial compliance" has the meaning set out in §21.2503 of this title (relating to Declaration of Unfair Trade Practice). [ This record must indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. A record of such complaints maintained in substantially the form as indicated on consumer complaint record will be presumed to be in compliance with this requirement, but consumer complaint record shall not be considered as the exclusive method to record such complaints. A copy of consumer complaint record may be obtained from the Consumer Services Division (111-1A), P.O. Box 149091, Austin, Texas 78714-9091];

(7)-(19) (No change)

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811402

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: August 30, 1998

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



## Subchapter Q. Complaint Records to be Maintained

### 28 TAC §§21.2501-21.2507

The Texas Department of Insurance proposes new Subchapter Q, §§21.2501-21.2507, relating to records which must be maintained by all insurers concerning complaints made against such insurers. The new sections are necessary to address comprehensive complaint record maintenance by insurers. The sections provide definitions of terms, prescribe minimum information items to be maintained by insurers in the complaint record, set out a recommended uniform method of complaint record maintenance by insurers, and prescribe a presentation format for such information. Comprehensive maintenance of complaint information will provide benefits to both insurers and the department. A properly maintained record of the type addressed in the sections will assist insurers to quickly determine the level of consumer satisfaction with the company in its dealings with policyholders and benefit recipients. Moreover, the sections will help assure more effective and economical availability to the department the information which insurers are required to maintain about claims processing and complaints resolution. Clarifying and conforming amendments to Subchapter C of this chapter, relating to unfair claim settlement practices, are published elsewhere in this issue of the *Texas Register*. The requirements set out in this subchapter are based on the Model Regulation for Complaint Records to be Maintained adopted by the National Association of Insurance Commissioners (NAIC). Proposed §21.2501 sets out the purpose and applicability of the sections. Proposed §21.2502 provides definitions for the terms "complainant," "complaint," "complaint record," "insurer,"

"person," and "written communication." Proposed §21.2503 provides it is an unfair trade practice for an insurer to fail to maintain a complete record of all complaints in substantial compliance with the sections. Proposed §21.2504 provides for minimum items of information required to be maintained by insurers in the complaint record. Proposed §21.2505 provides for a complaint record form. Proposed §21.2506 provides for the maintenance basis and compilation frequency of the complaint record. Proposed §21.2507 provides for the effective date of the sections.

Mary Keller, senior associate commissioner for the legal and compliance activity of the Texas Department of Insurance, has determined that for each year of the first five years the proposed new sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the new sections. Ms. Keller also has determined that there will be no effect on local employment or the local economy.

Ms. Keller also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administration and enforcement of new sections will be the more efficient administrative regulation of insurance licensees, and the more effective utilization of public resources by obtaining for use data that is essential to such regulation with respect to claims processing and complaints resolution.

Ms. Keller also has determined that for the first year the new sections are in effect, the cost to each insurer complying with the sections will depend on several factors, some of which result from options chosen by an insurer in order to comply with the sections.

The proposed new sections represent a purposeful effort by the department to mitigate maintenance compliance costs to all insurers, including those which qualify as small businesses under the Government Code, §2006.001, while at the same time assuring maintenance of minimum required information items determined to be necessary by the NAIC in its Model Regulation for Complaint Records to be Maintained.

All insurers currently are required by statute and rule to maintain a complete record of all complaints for the preceding three years or since the date of the most recent examination by the commissioner, whichever time period is shorter, for all complaints relating to the claims process or claims practices. The new sections do not materially change the items of information that must be maintained currently by all insurers for all complaints relating to the claims process and claims practices. Therefore, compliance cost for all insurers for maintenance of a complaint record resulting from these new sections is incremental, and relates primarily to those complaints to be maintained by insurers which do not result from the claims process or claims practices.

Another factor determining ultimate compliance cost under the new sections is whether an insurer is already maintaining a complaint record which captures all required items of information and whether that complaint record is maintained in substantially the format for presentation which is set out in the proposal. For insurers authorized to issue insurance coverage in any of the several states that have adopted the NAIC Model Regulation for Complaint Records to be Maintained, or insurers whose complaint record systems already capture all information required in the new sections, compliance costs relating to maintenance should be minimal, since the maintenance requirements of proposed new sections are identical to those of the NAIC Model. Like the NAIC Model, the proposed new sec-

tions do not prescribe a format for maintenance of the complaint record, but recommend one patterned on the NAIC Model. For these reasons, any insurer complying with the maintenance provisions of the Model also will be complying with maintenance provisions of the proposed new sections.

The first year compliance cost also will depend on whether the insurer chooses to make any changes to the manner or type of media in which it maintains its complaint record, and whether such a choice results in or reflects a change from the insurer's previous media format for complaint record maintenance.

Other cost containment features of the proposed new sections include their prospective application only to complaints received on or after the effective date of the sections, an effective date of January 1, 1999 to provide a compliance window, and the absence of a complaint record maintenance requirement as a single comprehensive register of complaints.

Unlike the NAIC Model, however, the proposed new sections prescribe a form for presentation of complaint information to the department at the time of examination or upon departmental request.

For reasons set out in this note, a one-time upgrade-or-conversion cost associated with complaint-information inclusion and format revision, or a periodic presentation conversion cost, is estimated to be no greater than \$15,000 for larger insurers, and for those utilizing electronic record maintenance systems currently capturing all required information items which are subsequently converted to the recommended maintenance format set out in these sections.

The compliance cost estimate for insurers using electronic record maintenance systems is based on a TDI Information Systems (IS) division review of complaint record requirements in the proposal. The \$15,000 estimate is based on IS experience in the current department network environment and the previous mainframe environment.

The first-year estimate includes incremental costs for additional programming for insurers with electronic systems having current capability to capture all required information items and choosing to maintain the record in the recommended format. It also includes incremental costs for additional programming for insurers with electronic systems lacking current capability to capture all required elements but with the capacity to do so if reprogrammed.

It also includes hardware/software acquisition costs and programming costs for insurers choosing to convert to electronic record maintenance systems from hard-copy systems or from electronic systems lacking current capability to capture all required information items where reprogramming might not be an option.

The ultimate amount of any upgrade-or-conversion costs to insurers which maintain the record electronically also will vary, as indicated in four illustrative examples developed by the IS division, as follows:

(1) For smaller insurers converting from hard copy systems to electronic systems, the conversion cost is estimated to be no more than \$2,500, based on the assumption that the insurer acquires personal computer hardware and a software package similar to MS Excel for data maintenance and reports which would not require programming.

(2) For insurers with electronic systems having current capability to capture all required elements, the upgrade cost is estimated to be no more than \$5,000, assuming the programming is necessary only to provide a presentation/reporting format as set out in the proposed new sections for items of complaint record information already captured.

(3) For smaller insurers choosing to convert to alternative electronic maintenance systems from systems lacking current capability to capture all required information items, the conversion cost is estimated to be no more than \$2,500, based on the assumptions that the insurer acquires personal computer hardware and a software package similar to MS Excel for data maintenance and reports which would not require programming, and that such a system is sufficient to meet the insurer's needs.

(4) For insurers choosing to upgrade an electronic maintenance system lacking current capability to capture all required information items, compliance cost associated with the upgrade is estimated to be no more than \$15,000, assuming programming is necessary for new files, data entry screens, and presentation/report capability.

This first-year cost for smaller insurers could be materially lower, since insurers may choose either electronic or hard-copy complaint maintenance systems, and because on average smaller insurers will have fewer complaints to maintain. Costs of upgrading for smaller insurers also will vary but overall should be lower, based on assumed smaller system requirements for such insurers.

Insurers qualifying as small businesses under the Government Code, §2006.001, might experience economic impact under the proposal, depending on how they choose to maintain the complaint record. For example, an insurer qualifying as a small business under §2006.001 choosing the option set out in representative example Number (1) with gross premium receipts of \$900,000 would have conversion costs of 28 cents per \$100 premium receipts. A similarly situated insurer having gross premium receipts of \$1,100,000 choosing the same option would have conversion costs of 23 cents per \$100 premium receipts.

Though the proposed new sections might have an economic impact on insurers qualifying as small businesses, the department has sought to mitigate compliance costs to insurers qualifying as small businesses as previously set out in this note by: (1) permitting various maintenance formats rather than prescribing a single format; (2) requiring no greater complaint information maintenance than provided in the NAIC Model; (3) providing that the maintenance and presentation provisions set out in the proposed new sections are prospective only; and (4) providing insurers maintaining hard-copy complaint records the opportunity to continue doing so.

For the second through the fifth years the proposed new sections are in effect, there is no anticipated difference in cost of compliance between small and large businesses on a per-complaint maintenance cost basis, or on a per-hour labor cost basis. Moreover, costs associated with maintaining the complaint record during the second and subsequent years of the administration and enforcement of the new sections are anticipated to be no more per complaint than the current per-complaint maintenance cost.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*

to Lynda H. Neseholtz, General Counsel and Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Mary Keller, Senior Associate Commissioner for Legal and Compliance, MC 110-1A, P.O. Box 149104, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Insurance Code, Articles 21.21 and 1.03A, and the Government Code, §2001.004. The Insurance Code, Article 21.21, §13, provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices. Article 1.03A provides that the commissioner may adopt rules for the conduct and execution of the duties and function of the department only as authorized by a statute. The Government Code, §2001.004 authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribes the procedure for adoption of rules by a state administrative agency.

The proposed new sections affect regulation pursuant to the following statutes: Insurance Code, Article 21.21.

§21.2501. Applicability and Purpose.

This subchapter applies to all insurers as defined in §21.2502 of this title (relating to Definitions). The purpose of this subchapter is to prescribe the minimum information required to be maintained in the complaint record of an insurer, to provide a recommended format for the maintenance of such a record by insurers, and to prescribe a presentation format for such information at the time of examination of insurers or upon other request for complaint record information by the department. Complaint record maintenance provisions of this subchapter apply to all complaints of an insurer not specifically excepted by this subchapter, including complaints relating to the claims settlement practices of an insurer.

(1) This subchapter does not apply to complaints received and maintained by Health Maintenance Organizations. The Insurance Code, Article 20A.12, as amended, as well as §11.205 of this title (Documents to be Available During Examinations), expressly and specifically provide for complaint record maintenance by HMOs.

(2) This subchapter does not apply to the complaints received by an insurer in its capacity as a utilization review agent. Complaint record maintenance and reporting for such complaints are addressed in §19.1716 of this title (relating to Complaints and Information).

§21.2502. Definitions

The following words or phrases, as used in these sections, shall have the meanings placed opposite them unless the explicit wording of a section or part of a section shall otherwise direct.

(1) Complainant-A person making or having made a complaint.

(2) Complaint-Any written communication, not solicited by an insurer, primarily expressing a grievance. For purposes of this subchapter, any written communication to an insurer by the same person which relates to the same claim, issue or question and requests or demands the same kind of relief and which arises out of the same transaction or transactions is considered to be part of the same complaint. A complaint is not a misunderstanding or a problem of misinformation that is resolved promptly by clearing up

the misunderstanding and/or supplying the appropriate information to the satisfaction of the person submitting the written communication, as applicable.

(3) Complaint record-An electronic or hard copy record maintained by an insurer on a calendar-year basis and consisting of all complaints it has received during the preceding three years or since the date of its most recent financial examination, whichever time period is shorter.

(4) Insurer-Stock and mutual life, health, accident, fire, casualty, fire and casualty, hail, storm, title, and mortgage guarantee companies; mutual assessment companies; local mutual aid associations; local mutual burial associations; statewide mutual assessment companies; stipulated premium companies; fraternal benefit societies; group hospital service organizations; county mutual insurance companies; Lloyds; reciprocal or interinsurance exchanges; and farm mutual insurance companies.

(5) Person-Any natural or artificial entity, including but not limited to, an individual, an association, or a partnership, trust or corporation.

(6) Written communication-Any communication that is documented by publication or otherwise being written onto a medium which is capable at the point of receipt of being viewed, stored, retrieved and reproduced by the recipient without any transcription. Such communication expressly includes, but is not limited to, facsimile transmissions and electronic mail transmissions.

§21.2503. Declaration of Unfair Trade Practice.

The failure of any insurer to maintain a complete record of all complaints which it has received during the preceding three years or since the date of its most recent financial examination by the commissioner of insurance, whichever time period is shorter, shall constitute unfair competition and unfair practices pursuant to the Insurance Code, Article 21.21, and shall be subject to the provisions of that article. An insurer must maintain its complaint record in substantial compliance with the provisions of this subchapter. For purposes of this subchapter, "substantial compliance" shall mean that the record maintained by the insurer must capture the prescribed minimum complaint information items set out in this subchapter, and must be provided to the department upon examination of the insurer or pursuant to a request from the department for such complaint information. Substantial compliance includes presenting such information to the department so that, if requested, a complete record of all complaints in the form set out in §21.2505 of this title (relating to Complaint Record Form) is provided upon examination or pursuant to a request for such complaint information by the department.

§21.2504. Complaint Record; Required Elements; Explanation and Instructions.

(a) Complaint record: general information. The complaint record provided for in this subchapter shall be maintained by all insurers. The complaint record is based on the Model Regulation for Complaint Records to be Maintained adopted by the National Association of Insurance Commissioners (NAIC), and incorporates the prescribed minimum information required to be maintained in a complaint record complying with all maintenance provisions of the NAIC Model regulation. The complaint record is intended and recommended to be maintained as a single, comprehensive record. The complaint record presented to the department at time of examination or in response to department request must indicate the total number of complaints received for the applicable time interval as set out in this subchapter.

(1) The complaint record may be maintained at the option of the insurer in either an electronic format or a hard-copy format.

(2) The format set out in §21.2505 of this title (relating to Complaint Record Form) is preferred and recommended.

(3) If the complaint record is maintained in a format other than the recommended form or as a decentralized record, the insurer must nonetheless be capable of providing the department a complete complaint record upon examination or request in the form set out in §21.2505 of this title (relating to Complaint Record Form). Moreover, utilization of NAIC Complaint Database System Standard Complaint Data Form classification coding conventions for the classifications and categories set out in subsections (b)-(h) of this section, as applicable, is preferred as a maintenance option. An insurer will be required to convert information items in columns (2) and (3) as set out in subsections (c) and (d) of this section so that presentation to the department will be in a format using NAIC Complaint Database System Standard Complaint Data Form classification coding conventions. Subsections (b)-(i) of this section set out information items to be included in the complaint record and refer to the recommended documentary format.

(b) Complaint identification information. The complaint record must include, as indicated in Column (1) of the Complaint Record Form, entry of the unique complaint identification number assigned by the insurer to the underlying originally-submitted complaint. For any complaint involving an agent, the complaint record must also include an identification number for the placing or servicing agent.

(c) Function and reason categories for the complaint. The complaint record must include, as indicated in Column (2) of the Complaint Record Form, an entry for both the function code category, and the reason code category applicable to the complaint. Each complaint is to be classified hierarchically so that each is first assigned a function code category, followed by a reason code category. The function code categories set out in this subsection relate to particular kinds of company activities. The reason code categories relate to the more specific transactions entered into or actions taken by the insurer and contributing to the complaint. It is recommended but not required that the four-digit reason codes set out by the NAIC in its Complaint Database System Standard Complaint Data Form be utilized in maintenance of reasons for complaints addressed in this subsection. The function categories are set out with descriptive specificity in paragraphs (1)-(5) of this subsection, with particular reason categories similarly set out as subparagraphs within those paragraphs, as follows:

(1) Underwriting

(A) Company underwriting

(B) Individual application underwriting (applicable to complaints where misrepresentations or declarations in an application results in insurer action that is the subject of the complaint)

(C) Cancellation

(D) Rescission

(E) Nonrenewal

(F) Premiums and rating

(G) Delays

(H) Refusal to insure

(I) Miscellaneous (any reason not specified in subparagraphs (A)-(H) of this paragraph)

(2) Marketing and Sales

(A) General Advertising

(B) Mass marketing advertising (any advertising essentially directed to reach more people than in a one-to-one relationship)

(C) Agent handling

(D) Replacement

(E) Dividend illustration

(F) Delays

(G) Misleading statement or misrepresentation

(H) Miscellaneous (any reason not specified in subparagraphs (A)-(G) of this paragraph)

(3) Claims

(A) Claims procedure

(B) Delays

(C) Unsatisfactory settlements

(D) Natural disaster adjusting (situations producing a large number of claims)

(E) Unsatisfactory settlement offers

(F) Denial of claim

(G) Miscellaneous (any reason not specified in subparagraphs (A)-(F) of this paragraph)

(4) Policyholder service

(A) Failure to respond

(B) Delays

(C) Miscellaneous (any reason not specified in subparagraphs (A) or (B) of this paragraph)

(5) Miscellaneous

(d) Line type. The complaint record must include, as indicated in Column (3) of the Complaint Record Form, an entry which indicates the line of insurance involved, utilizing the classification categories set out in paragraphs (1)-(14) of this subsection. It is recommended but not required that the four-digit reason codes set out by the NAIC in its Complaint Database System Standard Complaint Data Form be utilized in maintenance of line type indication addressed in this subsection. The line type categories are as follows:

(1) Automobile

(2) Fire

(3) Homeowners - Farmowners

(4) Crop

(5) Inland Marine

(6) Individual Life

(7) Group Life

(8) Annuities

(9) Individual Health - Accident and Sickness

(10) Group Health - Accident and Sickness

(11) Workers' Compensation

(12) Liability Insurance other than Automobile

(13) Mobile Homeowners

(14) Miscellaneous (any line not specified in paragraphs (1)-(13) of this subsection)

(e) Company disposition after receipt. The complaint record must include, as indicated in Column (4) of the Complaint Record Form, an entry indicating manner of final disposition of the complaint. The department prefers and recommends, but does not require, that the disposition codes or reasons set out in paragraphs (1)-(15) of this subsection be utilized by insurers in categorizing the manner in which a complaint is disposed of or resolved. The department recommends use of such reason categories because, although the NAIC Model Regulation for Complaint Records to be Maintained does not include specific categories, the NAIC Complaints Database System includes such disposition categories, along with four-digit numeric identifiers, as standard complaint coding conventions. Although not intended to be exhaustive of all disposition descriptions, the recommended disposition reasons in paragraphs (1)-(15) of this subsection are as follows:

(1) Policy issued/restored.

(2) Claim settled

(3) Additional claim payment made

(4) Refund of premium

(5) Advertising withdrawn/amended

(6) Underwriting practice resolved

(7) Cancellation notice withdrawn

(8) Nonrenewal notice rescinded

(9) Premium or rate problem resolved

(10) Question of fact

(11) Contract provision/legal issue

(12) Company position upheld

(13) Insufficient information

(14) Claim resolved through arbitration or mediation

(15) Other (Any disposition not addressed in paragraphs (1)-(14) of this subsection.)

(f) Date received. The complaint record must include, as indicated in Column (5) of the Complaint Record Form, entry of the date the complaint was received. The date received is the date the insurer originally received the complaint.

(g) Date closed. The complaint record must include, as indicated in Column (6) of the Complaint Record Form, entry of the date the complaint was closed. The date closed is the date on which the complaint was finally disposed of, either by a single action or by the final in series of actions as might be necessary for some complaints.

(h) Source of complaint. The complaint record must include, as indicated in Column (7) of the Complaint Record Form, an entry classifying origin of the complaint. At a minimum, the entry must clearly indicate any complaint originating from TDI or another insurance department. It is recommended but not required that the NAIC Complaints Database System standard complaint coding conventions for "complainant type" be utilized for classifying the origin of complaints other than those from insurance departments.

(i) State of origin. The complaint record must include, as indicated in Column (8) of the Complaint Record Form, an entry classifying origin of the complaint by state.

§21.2505. Complaint Record Form.

(a) Recommended maintenance form. The recommended form for complaint record maintenance is included in subsection (b) of this section in its entirety and has been filed with the Office of the Secretary of State. The form is available from the Texas Department of Insurance, Consumer Protection Division (111-1A), P.O. Box 149104, Austin, Texas, 78714-9104.

(b) Texas Department of Insurance Complaint Record Form. Figure: 28 TAC §21.2505(b)

§21.2506. Maintenance Basis and Compilation Frequency of the Complaint Record.

The complaint record shall be maintained on a calendar-year basis. All information items required to be maintained, including the number of complaints by line of insurance, function, reasons, disposition, complaint origin, and dates received and closed, shall be compiled not less frequently than once a year.

§21.2507. Effective Date.

Provisions of this subchapter addressing complaint record maintenance and presentation apply to all complaints of an insurer received on or after January 1, 1999.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811403

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: August 30, 1998

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IV. School Land Board

#### Chapter 151. General Rules of Practice and Procedure

##### 31 TAC §§151.1-151.5

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

The Texas General Land Office (GLO) and the School Land Board (SLB) propose the repeal of §§151.1-151.5, relating to General Rules of Practice and Procedure. This chapter and Chapter 153 and the rules they contain will be replaced by a new Chapter 151, relating to Operations of the School Land Board.

These actions have been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and will ensure that the SLB

operates according to administrative rules that are clear, necessary and up-to-date.

Fiscal implications for state or local government, public benefit, costs and other effects on individuals or small businesses will be addressed in the published proposal of the new Chapter 151.

Comments on the proposal may be submitted to Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 p.m. on August 31, 1998.

These actions are proposed under Texas Natural Resources Code §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and Texas Natural Resources Code §32.062 which grants rulemaking authority to the SLB.

Texas Natural Resources Code, §§32.001, 32.012, 32.014, 32.016, 32.020, 32.021, 32.022, 32.061, 32.105, 32.107, 32.109, 32.110, 32.111, 33.205, 52.015, and 52.016 are affected by this action.

§151.1. *Land and Mineral Estate Affected.*

§151.2. *School and Land Board Members.*

§151.3. *Meetings; Minutes; Agenda.*

§151.4. *Lease or Sale; Date; Advertisement; Rejections; Awards.*

§151.5. *Appraisal Fees: Vacancies and Excess Acreage.*

This 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 20, 1998.

TRD-9811362

Garry Mauro

Chairman

School Land Board

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 305-9129



## Chapter 151. Operations of the School Land Board

### 31 TAC §§151.1-151.4

The General Land Office (GLO) and the School Land Board (SLB) propose new Chapter 151, §§151.1-151.4, concerning Operations of the School Land Board. This new chapter will be adopted concurrently with the repeal of the existing chapter. These actions have been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and will ensure that the SLB operates according to administrative rules that are clear, necessary and up-to-date.

Spencer Reid, General Counsel, has determined that for the first five-year period the rules are in effect, there will be no negative fiscal implications for state or local government.

Mr. Reid also has determined that for each year of the first five-year period the rules are in effect, the public will benefit from the resulting simplified regulatory scheme regarding state-owned land and also from the increased flexibility provided to the SLB with respect to leasing. More specifically, the new rules will not limit lease sales to only the first Tuesday of a given month but

instead will allow them on the third Tuesday of a given month as well. Additionally, fees charged for the nomination of tracts for the lease sale will now only be refunded if the commissioner of the GLO determines that it is in the best interest of the state. Since all nominated tracts must be researched for eligibility by the SLB staff, refunds will not, as a general rule, be allowed. Finally, nominators for special lease sales must share the costs of any required advertising.

Mr. Reid also has determined that there may be fiscal implications for small businesses and individuals as a result of enforcing or administering the rules regarding the nonrefundability of the \$100 nomination fee, but the agency is unable to determine the total amount of such costs because that figure will depend on the presently unknown number of tracts which might be nominated yet found to be ineligible for lease.

Mr. Reid also has determined that there may be fiscal implications for small businesses and individuals as a result of enforcing or administering the rules regarding charging nominators for the cost of advertising special lease sales. The amount of such costs cannot be determined because that figure will depend on the presently unknown cost of the required newspaper advertising as well as the number of nominators participating in a given special lease sale. Finally, there may be minor fiscal implications as a result of any fees which may be charged for Notice for Bids packets. This impact is also not quantifiable because it will vary with each lease sale. The GLO does not intend to charge any such fee for the lease sale to be held in October of 1998.

In accordance with the 1997 General Appropriations Act, Article IX, §77, payors are hereby notified that any fee increases generated by these amendments are the result of decisions made by the GLO, and were not mandated the Legislature.

This new chapter is primarily operational in nature and, to the extent it adds new requirements that impact leasehold interests, will only apply to leases issued after the effective date of the new chapter, as well as any other leases that refer to or otherwise contemplate being controlled by administrative rules. Therefore, the GLO has determined that this action has no impact on private real property. A Takings Impact Analysis restating that conclusion is on file at the GLO.

This action is not a rulemaking subject to the Coastal Management Plan under Chapter 505 of this title, relating to Council Procedures for State Consistency with Coastal Program Goals and Policies.

Comments on any aspect of the proposed rules, including their consistency with the goals and policies of the Coastal Management Program, may be submitted to Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 p.m., August 31 1998.

These actions are proposed under Texas Natural Resources Code §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and Texas Natural Resources Code §32.062 which grants rulemaking authority to the SLB.

Texas Natural Resources Codes §§ 32.026, 32.107, 32.110, 33.205, 52.016, and 52.020 are affected by these rules.

§151.1. School Land Board Meeting Administration.



(a) The secretary of the School Land Board (SLB) shall keep as records at the General Land Office, the minutes and the docket of each meeting.

(b) The secretary of the SLB shall prepare the docket for the meeting and file and post notice of the meeting in compliance with the Open Meetings Act. Notice of the board meeting will include:

- (1) the time, date, and location of the meeting; and
- (2) those items to be considered by the SLB.

(c) Members of the public may make personal statements of their views on a matter before the SLB provided that they identify themselves for the record. Members of the public making only such statements will not be considered parties to the meeting.

(d) Any person requesting a formal action by the SLB must notify the secretary prior to the meeting, providing in writing the person's name, address, and interest in the meeting. Any such participant will be considered a party to the meeting.

(e) All persons appearing before the SLB and any evidence they present will be subject to full examination by the members of the SLB.

(f) Parties may be represented by an attorney. Upon notification of the secretary, the attorney will receive all correspondence directed to the party on behalf of the SLB.

(g) Any applicant before the SLB and any other person filing their name, address, and a request for notification with the secretary, will be notified in writing of the date, time, and place of the board meeting at which the application will be considered. However, failure to mail the notice does not invalidate any action taken by the SLB.

(h) An applicant and those persons who have properly requested notification will be informed in writing of any action taken by the SLB concerning that person's application as expeditiously as possible following the meeting.

(i) The SLB shall adopt, amend, and repeal rules in accordance with the *Texas Register* and Administrative Code, Government Code, Chapter 2002. Any interested person may petition the SLB in writing to request adoption of a rule. The SLB shall consider the request at the next scheduled meeting and shall either grant or deny the request. Rulemaking procedures shall be initiated within 60 days of the receipt of the request if granted. If denied, the SLB shall state its reasons in writing and mail them to the petitioner within 60 days of receipt of the request.

(j) The SLB's policy is to encourage and ensure maximum public participation in all matters it considers. The SLB shall conduct all meetings in accordance with the Open Meetings Act.

#### §151.2. Energy Lease Sales.

(a) Written requests that designated tracts of state land be offered for lease of oil, gas, and other minerals may be submitted to the commissioner of the General Land Office (GLO) at any time.

(b) When the School Land Board (SLB) schedules a lease sale, it shall also set a final date for submitting nominations for that sale. This date shall be included in the notice of the sale. A list of tracts offered for lease at a particular lease sale may be obtained from the GLO. The GLO reserves the right to assess a fee for this service. For more information please contact the Minerals Leasing Division of the GLO.

(c) A \$100 fee made payable to the GLO shall be submitted for each tract nominated. Nomination fees are nonrefundable. However, a refund of a nomination fee may be granted at the

commissioner's discretion, if the commissioner determines that it is in the best interest of the state.

(d) After a bid has been received by the GLO it may not be revoked or withdrawn by the bidder. All bids must include a separate check in an amount equal to one and one-half percent of the bid payable to the commissioner as a special fee. Checks submitted by unsuccessful bidders shall be returned to the bidders. Failure to pay the special fee does not render a bid void, but the commissioner shall demand payment of the fee before issuing a lease to the successful bidder. If the successful bidder fails or refuses to make the payment within 30 days after demand by the commissioner, the bidder is not entitled to a sale of or lease on the tract covered by that bid and the cash bonus shall be automatically forfeited to be deposited by the commissioner in the state treasury to the credit of the appropriate special mineral fund for the agency involved. The SLB, at its option, may offer the tract for sale or lease to the next best bidder under the same terms as submitted by and as would have been granted to the best bidder.

(e) Interested state and federal agencies will be requested to submit recommendations on tracts nominated in submerged areas so that a prospective bidder is informed in advance as to any drilling or development restrictions which might be expected.

(f) All bonuses and special fees required by Texas Natural Resources Code §32.110 shall be returned to the makers of unsuccessful bids. Executed leases will be delivered to the successful bidders.

(g) Nominators of tracts shall pay all required advertising costs associated with lease sales other than those sales regularly scheduled for April and October of each year. Nominators of tracts in such a sale shall be billed by the GLO for their portion of those costs.

#### §151.3. Appraisal Fees: Vacancies and Excess Acreage.

(a) All successful applicants for the purchase of a vacancy shall pay a fee of \$300 to cover the expense of the appraisal required by the School Land Board (SLB) to establish the purchase price for the vacancy.

(b) All applicants for the purchase of excess acreage shall pay a fee of \$300 for the first section or survey to be appraised and \$50 for each additional section or survey to be appraised to cover the expense of the appraisal required by the SLB to establish the purchase price for the excess acreage.

#### §151.4. Consistency with Coastal Management Program.

Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) of this title taken or authorized by the General Land Office or School Land Board pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16, such conflicting provisions of Chapter 16 will control.

This 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 20, 1998.

TRD-9811364  
Garry Mauro  
Chairman

School Land Board  
Earliest possible date of adoption: August 30, 1998  
For further information, please call: (512) 305-9129



## Chapter 153. Exploration and Development

### 31 TAC §§153.1-153.4

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

The Texas General Land Office (GLO) and the School Land Board (SLB) propose to repeal Chapter 153, §§153.1-153.4 relating to Exploration and Development. This chapter and Chapter 151 and the rules they contain will be replaced by a new Chapter 151, relating to Operations of the School Land Board.

These actions have been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and will ensure that the SLB operates according to administrative rules that are clear, necessary and up-to-date.

Fiscal implications for state or local government, public benefit, costs and other effects on individuals or small businesses will be addressed in the published proposal of the new Chapter 151.

Comments on the proposal may be submitted to Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 p.m. on August 31, 1998.

These actions are proposed under §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and §32.062 which grants rulemaking authority to the SLB.

Texas Natural Resources Code, §§32.001, 32.012, 32.014, 32.016, 32.020, 32.021, 32.022, 32.061, 32.105, 32.107, 32.109, 32.110, 32.111, 33.205, 52.015, and 52.016 are affected by this action.

§153.1. *Nominations of Tracts for Lease.*

§153.2. *Land Offered for Lease.*

§153.3. *Lease Approval.*

§153.4. *Consistency with Coastal Management Program.*

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811363

Garry Mauro

Chairman

School Land Board

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 305-9129



## Part V. Board for Lease of State-Owned Lands

## Chapter 201. General Rules

### 31 TAC §§201.1-201.16

*(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 Boards for Lease of State-Owned Lands or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The General Land Office (GLO) and the Texas Parks and Wildlife Department and the Texas Department of Criminal Justice Boards for Lease propose the repeal of §201.1-201.16, relating to General Rules. This chapter and the rules it contained will be replaced by a new Chapter 201, relating to Operations of the Texas Parks and Wildlife Department and Texas Department of Criminal Justice Boards for Lease.

These actions have been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and will ensure that these boards for lease operate according to administrative rules that are clear, necessary and up-to-date.

Fiscal implications for state or local government, public benefit, and any effects on individuals or small businesses will be addressed in the published proposal of the new Chapter 201.

Comments on the proposal may be submitted to Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 p.m. on August 31, 1998.

This action is proposed under Texas Natural Resources Code, §34.065 which grants the Texas Department of Criminal Justice and Texas Parks and Wildlife Department boards for lease rulemaking authority.

Texas Natural Resources Code §§32.110, 34.002, 34.011, 34.012, 34.013, 34.014, 34.055, 34.057, and 34.064 are affected by this action.

§201.1. *Boards for Lease.*

§201.2. *Board Members.*

§201.3. *Minutes.*

§201.4. *Agenda.*

§201.5. *Land for Lease.*

§201.6. *Excluded Lands.*

§201.7. *Lease Sale.*

§201.8. *Nominations of Tracts, for Lease.*

§201.9. *Filing in General Land Office.*

§201.10. *Deposits.*

§201.11. *Assignment of Lease.*

§201.12. *Forfeiture of Lease.*

§201.13. *Permits.*

§201.14. *Easements.*

§201.15. *Lessee Responsibility.*

§201.16. *Pollution & Restoration.*

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

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Garry Mauro

Commissioner

General Land Office

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## Chapter 201. Operations of the Texas Parks & Wildlife Department and Texas Department of Criminal Justice Board for Lease

### 31 TAC §§201.1-201.7

The General Land Office (GLO), the Texas Parks and Wildlife Department (TPWD), and Texas Department of Criminal Justice Boards for Lease propose new Chapter 201, §§201.1-201.7, concerning Operations of the Texas Parks and Wildlife Department and Texas Department of Criminal Justice Boards for Lease. This new chapter will be adopted concurrently with the repeal of the existing chapter. These actions have been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article IX, §167, and will ensure that these boards for lease operate according to administrative rules that are clear, necessary and up-to-date.

Spencer Reid, General Counsel, has determined that for the first five-year period the rules are in effect there will be no negative fiscal implications for state or local government.

Mr. Reid also has determined that for each year of the first five-year period the rules are in effect, the public will benefit from the resulting simplified regulatory scheme regarding state-owned land. Additionally, fees charged for the nomination of tracts for the lease sale will now only be refunded if the commissioner of the GLO determines that it is in the best interest of the state. Since all nominated tracts must be researched for eligibility by the School Land Board staff, refunds will not, as a general rule, be allowed.

Mr. Reid also has determined that there may be fiscal implications for small businesses and individuals as a result of enforcing or administering the new chapter and rules regarding the nonrefundability of the \$100 nomination fee, but the agency is unable to determine the total amount of such costs because that figure will depend on the presently unknown number of tracts which might be nominated yet found to be ineligible for lease.

Mr. Reid also has determined that because these new rules incorporate the concurrently proposed §151.2(g) of this title, (relating to Energy Lease Sales), there may be fiscal implications for small businesses and individuals as a result of enforcing or administering that portion of the new chapter and rules regarding charging nominators for the cost of advertising special lease sales. The amount of such costs cannot be determined because that figure will depend on the presently unknown cost of the required newspaper advertising as well as the number of nominators participating in a given special lease sale.

Mr. Reid also has determined that there may be fiscal implications for small businesses and individuals as a result of administering portions of new §201.6 of this title, (relating to Lessee

Responsibility). However, because some of the provisions of this section generally reflect standard industry practice and the typically expected actions of a reasonably prudent operator, as already required of any lessee by the common law of this state, the fiscal implications of those provisions will not result in new costs being imposed on lessees. Certain requirements concerning a lessee's responsibilities, contained in §201.6, may impose some costs on small businesses and individuals. Because the exact number of state lessees will inevitably vary, and due to other variables particular to each individual lessee, the fiscal impact of such costs is not quantifiable.

In accordance with the 1997 General Appropriations Act, Article IX, §77, payors are hereby notified that any fee increases generated by these rules are the result of decisions made by the GLO, and were not mandated by the legislature.

This new chapter is primarily operational in nature and, to the extent it adds new requirements that impact leasehold interests, will only apply to leases issued after the effective date of the new chapter, as well as any other leases that refer to or otherwise contemplate being controlled by administrative rules. Therefore, the GLO has determined that this action has no impact on private real property. A Takings Impact Analysis restating that conclusion is on file at the GLO.

This action is not a rulemaking subject to the Coastal Management Plan under Chapter 505 of this title, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies.

Comments on any aspect of the proposed rules, including its consistency with the goals and policies of the Coastal Management Program, may be submitted to Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 P.M. on August 31, 1998.

This action is proposed under Texas Natural Resources Code, §34.065 which grants the Texas Department of Criminal Justice and Texas Parks and Wildlife Department Boards for Lease rulemaking authority.

Texas Natural Resources Codes §§32.152, 32.155, 32.156, 32.157, 33.205, 33.2052, 33.2053, 34.018, 34.020, 34.051, 34.057, 34.0135, 52.029, 52.085, 52.131, 52.132, 52.135, 52.176, and 89.011 are affected by this rule.

#### §201.1. Boards for Lease Meeting Administration.

(a) The secretary of a Board for Lease (Board) shall keep as records at the General Land Office, the minutes and the docket of each meeting.

(b) The secretary of the Board shall prepare the docket for the meeting and file and post notice of the meeting in compliance with the Open Meetings Act. Notice of the board meeting will include:

- (1) the time, date, and location of the meeting; and
- (2) those items to be considered by the Board.

(c) Members of the public may make personal statements of their views on a matter before the Board provided that they identify themselves for the record. Members of the public making only such statements will not be considered parties to the meeting.

(d) Any person intending to present evidence before the Board or participate in the meeting other than by personal statement must notify the secretary prior to the meeting, providing in writing the person's name, address, and interest in the meeting. Any such

participant and their witnesses will be considered parties to the meeting.

(e) All persons appearing before the Board, and any evidence they present, will be subject to full examination by the members of the Board.

(f) Parties may be represented by an attorney. Upon notification of the secretary, the attorney will receive all correspondence directed to the party on behalf of the Board.

(g) Any applicant before the Board and any other person filing their name, address, and a request for notification with the secretary, will be notified in writing of the date, time, and place of the board meeting at which the application will be considered. However, failure to mail the notice does not invalidate any action taken by the Board.

(h) An applicant and those persons who have properly requested notification will be informed in writing of any action taken by the Board concerning that person's application as expeditiously as possible following the meeting.

(i) The Board shall adopt, amend, and repeal rules in accordance with the *Texas Register* and Administrative Code, Government Code, Chapter 2002. Any interested person may petition the Board in writing to request adoption of a rule. The Board shall consider the request at the next scheduled meeting and shall either grant or deny the request. Rulemaking procedures shall be initiated within 60 days of the receipt of the request if granted. If denied, the Board shall state its reasons in writing and mail them to the petitioner within 60 days of the request.

(j) The Board's policy is to encourage and ensure maximum public participation in all matters it considers. The Board shall conduct all meetings in accordance with the Open Meetings Act.

#### §201.2. Lease Sale.

(a) A Board for Lease (Board) may schedule a lease sale at any time. Leases of land owned by the Texas Parks and Wildlife Department or the Texas Department of Corrections shall be advertised and sold in the same manner as leases issued by the School Land Board (SLB) under Texas Natural Resources Code, Chapter 32. The procedures, fees, and cost sharing set out in Chapter 151 of this title (relating to Operations of the School Land Board) shall also apply to the Board's lease sales.

(b) The lease shall contain the same terms and conditions as leases issued by the SLB under Texas Natural Resources Code, Chapter 32 and Chapter 151. However, a Board may place any other terms and conditions in the lease it determines to be in the best interest of the state.

#### §201.3. Filing in General Land Office.

Records pertaining to leases by a Board for Lease are to be filed in the records of the General Land Office accompanied by any filing fee prescribed by §1.3 of this title (relating to Fees).

#### §201.4. Deposits.

Payments received by a Board for Lease are payable to the commissioner of the General Land Office, who will deposit receipts with the state treasurer to the credit of the appropriate special mineral fund for the agency involved.

#### §201.5. Provisions.

The provisions of Texas Natural Resources Code, Chapters 32 and 52, and §9.7 of this title (relating to Royalty and Reporting Obligation to the State), and §9.8 of this title (relating to Discontinuing the

Leasehold Relationship) shall apply to leases issued by a Board for Lease.

#### §201.6. Lessee Responsibility.

(a) Applicable Laws. All drilling, producing, gathering, transporting, processing and other operations on state lands shall be subject to applicable state and federal laws.

(b) Conflict between this chapter and other rules and statutes. Operations on state lands are subject to all valid applicable state and federal regulatory authorities. This chapter supplements the regulatory powers of such authorities.

(c) General policy. These rules are not intended to unlawfully impair any existing contract.

(d) Exceptions to this chapter. A Board for Lease (Board) may if authorized by law and upon proper written request, grant exceptions to the provisions of this chapter if the Board deems the exceptions to be in the best interest of the state. No such exception shall be effective until a written request by the lessee and a written explanation, approved by the Board and signed by the commissioner, as chairman of the Board, is placed in the appropriate mineral file or other General Land Office file.

(e) Compliance. Lessee shall comply with the provisions of the lease. Nothing in this chapter shall be construed as relieving a lessee of this duty or as impairing any remedies available to the state. If a lessee or operator fails to comply with this chapter, the Board may seek any remedy allowed by law, including forfeiture of the lease. Lessee shall be liable for the damages caused by such failure and any costs and expenses incurred while enforcing this chapter and cleaning areas affected by any pollution or discharged waste. A lessee is also responsible for the actions or omissions of its operator as well as for the actions or omissions of lessee's employees, agents, servants, contractors, subcontractors, trustees, receivers, and any other agent in control of any or all of the leasehold interest.

(f) Identification. All well locations and other structures shall be marked so as to identify the state tract number, well number, and the company operating the lease. Additionally, any well drilled on property leased under this chapter must be identified as a state well in Railroad Commission records by using "state" as the first word in its designated Railroad Commission name.

(g) Inspections. The commissioner of the GLO, the attorney general, the governor, and their representatives, shall at all times have access to the premises upon which wells are being drilled or produced for oil, gas, or other minerals to make inspections of all drilling, producing, gathering, and processing operations, or for any other reason deemed necessary.

(h) Records. The General Land Office may from time to time require any records not otherwise required relating to any aspect of lease operations and accounting. Such records shall be provided to the General Land Office within 30 days of the agency's request for their production.

(i) Commingling production. Requests to commingle production from state leases should be sent with supporting data to the following address: Commissioner of the General Land Office, Attention: Mineral Leasing Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701-1495.

(j) Surface Use and Hole Abandonment. Any hole or holes drilled by any exploration party under the terms of a lease issued by the state under this chapter shall be drilled in such manner as to interfere as little as possible with the current use of the surface. Upon the abandonment of such holes, all of the rigging and material shall be

removed, and the surface where said hole was drilled shall be restored to its former condition as nearly as possible. Upon abandonment of a well site, all wells shall be plugged and all structures removed in compliance with Railroad Commission and United States Army Corps of Engineer regulations. All fills for roads and drill sites shall be removed if requested by the commissioner.

(k) Degree of care. Lessee shall use the highest degree of care in conducting operations on tracts leased under this chapter and shall take all proper safeguards to prevent the discharge of any pollutant, including solid waste, and of any hazardous substances. To satisfy these requirements, lessee, at a minimum, must conduct operations as a reasonably prudent operator using standard industry practices and procedures, must satisfy express lease provisions, and must comply with all valid, applicable federal and state regulations.

(l) Reporting Pollution. In the event that any pollution, whether cumulative or the result of an isolated event, occurring on a leased tract reaches a level at which it becomes a violation of state and/or federal law, notice of all relevant facts related to such pollution shall be filed by lessee with the General Land Office within 10 business days of lessee's receipt of notification of the violation from the appropriate state and/or federal authorities.

(m) Separator required. All wells producing liquids must be produced through an oil and gas separator of ample capacity and in good working order.

*§201.7. Consistency with Coastal Management Program.*

Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) taken or authorized by the Texas Parks and Wildlife Department or Texas Department of Corrections Board for Lease pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 is subject to and must be consistent with the goals and policies identified in Chapter 16 in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16, such conflicting provisions of Chapter 16 will control.

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

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TRD-9811393

Garry Mauro

Commissioner

General Land Office

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 305-9129



## Chapter 363. Financial Assistance Programs

### Subchapter E. Economically Distressed Areas Program

#### 31 TAC §363.502, §363.505

The Texas Water Development Board (board) proposes amendments to §363.502 and §363.505, concerning Financial Assistance Programs. Amendments to §363.502 and §363.505 amend definitions and amend provisions for the calculation of

financial assistance in the Economically Distressed Areas Program.

Proposed amendments to §363.502 would amend the definition for "Living unit equivalents or LUE" to be an annual average of residential water usage rather than a monthly average, to differentiate between existing provider utilities and a new utility services, and for existing provider utilities, insure that the number of LUE's is not less than the existing number of service connections. The definitions for "Regional capital component benchmark" and "Regional Payment benchmark" are amended to rely on comparable service providers rather than an geographic proximity. A definition of "Comparable service provider" is added to identify comparable service providers as providing similar service to similarly sized population, with a similar treatment capacity, and with customers of the similar per capita income. The section is further amended to number definitions in accordance with new Texas Register requirements.

Proposed amendment to §363.505 would revise the methodology for determining the amount and form of financial assistance on applications requesting an increase in the amount of financial assistance previously provided by the board for projects under the Economically Distressed Areas Program. The current method for determining the amount of the loan for project increases would be to determine a grant to loan ratio based on the current board methodology for determining the amount and form of financial assistance for the project increase only, to also determine the amount of the loan for the increase based on the grant to loan ratio originally given for the project, and for the board to accept the larger of the two amounts as the amount of financial assistance to be added to the original loan for the project. The remainder of the requested increase would be in the form of a grant. The proposed method for determining the amount of the loan for project increases would be to determine a loan amount using the current capital component methodology for the total project including the increase and then deducting any amounts previously provided loan amounts, to also determine the amount of the loan for the increase based on the grant to loan ratio originally given for the project and apply that ratio to the requested increase only, and for the board to accept the larger of the two amounts as the amount of financial assistance to be added to the original loan for the project. The remainder of the requested increase would still be in the form of a grant.

Patricia Todd, Director of Accounting & Finance, has determined that for each year of the first five years that the sections are in effect, there may be fiscal implications for state or local government as a result of enforcing or administering the sections. There may be increases or decreases in the amount of funds local governments may have to borrow as a result of the application of this new methodology. These increases or decreases in loans cannot be forecasted as the conditions will vary on a case-by-case basis.

Ms. Todd also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater clarity in determining the amount of financial assistance provided in the form of loans as well as to insure that the applicants requesting increases will be able to participate in the loan portion of the program to the full extent of their ability to repay such loan. There will not be an effect on small businesses. There may be an anticipated economic cost to persons who are required to comply with the amendments as proposed. There may be an effect on individuals in the event that the application of the new

methodology causes a local government to otherwise increase the amount of funds borrowed, in that the increase debt may raise the service rates for water and/or wastewater, however, it cannot be quantified at this time.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, 512/475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §16.342 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and the authority to adopt rules that are necessary to carry out the program provided by Subchapter K, Chapter 17, of the Water Code.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 17, Subchapter K, §17.933.

§363.502. *Definitions of Terms.*

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

(1) Capital component - That component of the existing rate of a provider utility for the applicable utility service used to retire the long term capital debt of the system determined by calculating a monthly average of the existing annual long term capital debt payments of the utility service provider divided by the total number of living unit equivalents (LUE).

(2) Comparable service provider - A service provider that provides the same type of service as the provider utility for the proposed project to a similarly sized population, with a similar treatment capacity, and serving a population that has a similar per capita income based on available census data adjusted pursuant to the calculation set forth in the §371.24(b)(7) for adjusted median household income.

(3) Default rate - The average monthly number of residential customers that are delinquent in payment in excess of six months for the service provided divided by the average monthly total number of residential customers.

(4) Living unit equivalents or LUE - [~~The total volume of water provided or wastewater treated annually by a provider utility divided by the annual use of a typical single family residence of the provider utility divided by twelve months.~~] The number of existing or projected residential rate payer equivalents for the provider utility in the area to be served by a proposed project which is calculated by dividing:

(A) for existing provider utilities, the total historical annual water use of the provider utility, which includes the residential, commercial and institutional water use, by the historical average annual water use of an average residential connection of the provider utility, provided however, that in no event shall the number of LUE's for the project area be less than the number of service connections of the provider utility for the project area; or

(B) for new provider utilities, the total estimated annual water use of the provider utility, which includes the residential, commercial and institutional water use, by the estimated average annual water use of an average residential connection of the provider utility, provided however, that in no event shall the number of LUE's for the project area be less than the estimated number of service connections of the provider utility for the project area.

(5) Long term capital debt - The total amount of outstanding indebtedness of an applicant that at the time the debt was incurred was intended to be repaid over a period longer than one year, the proceeds of such indebtedness being used for the purpose of acquiring, constructing, or improving a water or sewer system or a necessary component to the service, operation, or maintenance of such system, including long term capital leases of real property and provided that leases for personal property are excluded.

(6) Payment rate - One minus the default rate of a service utility.

(7) Provider Utility - the entity which will provide water supply or wastewater service to the economically distressed area.

(8) Regional capital component benchmark - The average capital component of all customers of no less than three comparable [water or wastewater] service providers [located in Texas within a 100 mile radius of the project area].

(9) Regional payment benchmark - The average of the payment rates of no less than three comparable [water or wastewater] service providers [located in Texas within a 100 mile radius of the project area].

§363.505. *Calculation of Financial Assistance.*

(a) The board's financial assistance will be determined by the provisions of this section, including calculating:

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

(3) for applications requesting an increase in the amount of financial assistance previously provided by the board for the project under this program, the amount of the increase for which repayment will be required will be the greater of:

(A) an amount equal to the amount of the loan of the financial assistance provided by the board in its first commitment for the project divided by the total amount of the financial assistance provided by the board in its first commitment for the project multiplied by the amount of the additional financial assistance request under consideration by the board; or

(B) an amount equal to the amount of the loan that would have resulted by applying [implementing] the provisions of subsection (a)(2) of this section to the total [financial assistance for the] project area, less the amount of the loan portion of the financial assistance provided by the board in its previous commitments for the project under this subchapter [including the increase, divided by the total project cost of the project, including the increase, multiplied by the amount of the additional financial assistance request under consideration by the board].

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

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

Filed with the Office of the Secretary of State, on July 17, 1998.

TRD-9811295

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: September 17, 1998

For further information, please call: (512) 463-7981



## Chapter 367. Agricultural Water Conservation Program

### Subchapter A. Introductory Provisions

#### 31 TAC §367.1

*(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 Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Water Development Board (the board) proposes the repeal of §§367.1, 367.41-367.50 and 367.70-367.79 and new §§367.1 and 367.40-367.51, concerning the Agricultural Water Conservation Program. Repealed §§367.41-367.50 are obsolete as funding is no longer available for the pilot program for low interest loans for agricultural water conservation equipment. Sections 367.70-367.79 will be repealed and incorporated into new §§367.40-367.51 in order to renumber the sections, incorporate an expanded list of eligible projects pursuant to Texas Water Code, §17.895, and add provisions for engineering and environmental reviews for projects that involve construction activities. New §367.1 is proposed to eliminate references to the repealed sections.

In order to comply with new Texas Register structuring requirements, §§367.1-367.3 and 367.21- 367.30 will be known as Subchapter A, Grants for Equipment Purchases. New §§367.40 - 367.51 will be known as Subchapter B, Agricultural Water Conservation Loan Program.

The substantive changes made in §§367.40-367.51 from the repealed §§367.70-367.79 are as follows:

The definition of executive administrator has been amended to indicate that the term includes a designated representative of the executive administrator. This is consistent with provisions of the Texas Water Code which allow the executive administrator to delegate certain duties to deputy administrators and other staff.

In new §367.43, previously §367.73, two new purposes for making conservation loans have been specified, consistent with changes to the Texas Water Code: loans for preparing and maintaining land for brush control activities, and precipitation enhancement activities in areas of the state where such activities would be, in the board's judgement, most effective. Subsection (c) has been added in new §367.43 to conform to changes made during the 75th legislative session, and specifies that the board may make conservation loans to borrower districts for the cost of purchasing and installing devices on public or private property designed to indicate the amount of water withdrawn for irrigation purposes. Prior to this change board loans to borrower districts could only be used on district facilities.

New §367.44, previously §367.74, includes new subsection (c) specifying that the board establishes the rate of interest it charges for loans to lender districts for conservation loans to borrower districts. New subsection (d) specifies that the lender district may charge individual borrowers an interest rate not to exceed the interest rate the lender district is charged by the board plus one percent for administrative expenses. Subsection (e) specifies that the lender district may charge an individual borrower a one time application fee in an amount determined by the board to cover costs of processing loan applications.

New §367.45, previously §367.75, includes a requirement to provide a certified copy of a resolution adopted by the governing body approving the application and authorizing representatives for executing the application.

New §367.46, previously §367.76, specifies the statutory requirements that the board must consider and find in approving an application for a loan.

New §367.48 requires borrower districts to obtain executive administrator approval of contract documents and engineering plans and specifications prior to receiving bids and awarding the contract. It specifies the provision that the contract documents must contain, including compliance with the board's rules and statutes, retainage requirements of 5% and a contractor's act of assurance. It requires borrower districts to provide for adequate inspection of projects by registered professional engineers and to require engineers' assurance that work is performed in a satisfactory manner. It provides for the executive administrator's inspection of the project. It specifies that substantial alterations in the purpose of the project or increases in the loan commitment will require board approval. It specifies the conditions upon which the certificate of completion will be provided from the executive administrator after which final release of retainage may be made.

New §367.49 provides for borrower districts to conduct environmental assessments upon projects which require erecting, building, altering, remodeling, improving, or extending a water supply project, and which require surface or subsurface soil disturbance or alteration of existing vegetation.

New §367.51(b) requires that lender districts provide a report on loans made to borrowers during the preceding state fiscal year.

Patricia Todd, Director of Accounting & Finance, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Todd also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to fund cost-effective measure to promote agricultural soil and water conservation for the State. There will be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the repeals and new sections will be accepted for 30 days following publication and may be submitted to Gail Allan, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, 512/463-7804.

The repeal is proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

Chapter 17, Subchapter J and Chapter 15, Subchapter G are the statutory provisions affected by the proposed repeal.

§367.1 Policy Statement

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

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Suzanne Schwartz  
General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7981



## Subchapter A. Grants for Equipment Purchases

### 31 TAC §367.1

The new section is proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

Chapter 17, Subchapter J and Chapter 15, Subchapter G are the statutory provisions affected by the proposed new section.

#### §367.1. Policy Statement.

It is the policy of the board to provide grants for equipment purchases to provide for agricultural water conservation to conserve the state's water resources and provide resulting benefits to all of the state's citizens. This subchapter implements the Texas Water Code, Subchapter H.

This 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 17, 1998.

TRD-9811292

Suzanne Schwartz  
General Counsel

Texas Water Development Board

Proposed date of adoption: September 17, 1998

For further information, please call: (512) 463-7981



## Subchapter B. Agricultural Water Conservation Loan Program

### 31 TAC §§367.40-367.51

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

Chapter 17, Subchapter J and Chapter 15, Subchapter G are the statutory provisions affected by the proposed new sections.

#### §367.40. Policy Statement.

It is the policy of the board to implement an agricultural water conservation loan program in order to conserve the state's water resources and provide resulting benefits to all of the state's citizens.

#### §367.41. Definitions.

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

(1) Ag trust fund - The agricultural trust fund, a special fund created in the state treasury pursuant to the Texas Water Code, §15.431.

(2) Board - The Texas Water Development Board.

(3) Borrower district - A district or authority created under the Texas Constitution, Article III, §§52(b)(1) and (2), or Article XVI, §59, that receives or is eligible to receive a conservation loan from the board for improvement to district facilities.

(4) Conservation loan - A loan from the board to a borrower district or from a lender district to an individual borrower.

(5) Development fund manager - The development fund manager of the Texas Water Development Board.

(6) Executive administrator - The executive administrator of the Texas Water Development Board or a designated representative.

(7) Fund - The agricultural water conservation fund.

(8) Individual borrower - A person who receives or is eligible to receive a conservation loan from a lender district.

(9) Lender district - A soil and water conservation district under the Agriculture Code, Chapter 201, an underground water conservation district created under the Texas Constitution, Article XVI, §59, or a district or authority created under the Texas Constitution, Article III, §52(b)(1), or Article XVI, §59, authorized to supply water for irrigation purposes, that is eligible to receive or that receives a loan from the board for the purpose of making conservation loans to individual borrowers.

(10) Loan - A loan from the board to a lender district.

#### §367.42. Use of Fund.

In accordance with the Texas Water Code, §17.894 and §15.431, the board may use money in the fund or money maintained as principal in the ag trust fund to make conservation loans directly to borrower districts, to make loans to lender districts, and to pay the cost of bond issuance.

#### §367.43. Conservation Loans.

(a) The board or lender districts may make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs:

(1) To improve water use efficiency of water delivery and application on existing irrigation systems;

(2) for preparing irrigated land to be converted to dryland conditions;

(3) for preparing dryland for more efficient use of natural precipitation;

(4) for preparing and maintaining land to be used for brush control activities, including but not limited to activities conducted pursuant to the Agriculture Code, Chapter 203; or

(5) for implementing precipitation enhancement activities in areas of the state where such activities would be, in the board's judgment, most effective.



(b) Conservation loans for the purposes listed in subsection (a) of this section may be made by lender districts to individual borrowers for use on private property or by the board to borrower districts for use on district facilities.

(c) The board may make conservation loans to borrower districts for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.

§367.44. Procedure and Method for Setting Interest Rates.

(a) For loans and conservation loans from the ag trust fund, the development fund manager will set fixed interest rates on a date that is five business days prior to the effective date of the contract between the board and the lender district or borrower district, or the lender district or borrower district's adoption of the ordinance or resolution authorizing its bonds and not more than 45 days before the anticipated closing of the loan from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the development fund manager. The fixed interest rate shall be the same as the asking yield of the twelve month maturity U.S. Treasury note on the date that rates are set.

(b) For loans and conservation loans from the fund, the development fund manager will set the interest rates at the weighted rate of the lending rates for principal payments received in the previous fiscal year into the fund.

(c) The board shall establish the rate of interest it charges for loans to lender districts or for conservation loans to borrower districts.

(d) A lender district may charge individual borrowers an interest rate not to exceed the interest rate the lender district is charged by the board, plus 1.0% for administrative expenses.

(e) A lender district may charge individual borrowers a one-time application fee in an amount determined by the board to cover costs of processing loan applications.

§367.45. Applications.

A lender district that desires to obtain loans or a borrower district that desires to obtain conservation loans shall file an application with the executive administrator. The application shall be consistent with the application guidelines which are available from the development fund manager. An application shall include information on the following:

- (1) origination and description of the district;
- (2) fiscal information with a plan for repayment to the board of the loan, including a plan for repayment in the event of default;
- (3) the district shall specify the amount, period, and intended use of the loan;
- (4) the district's rules or procedures for approving borrower's loan applications and for approving and managing lender-borrower agreements;
- (5) for lender districts, rules or procedures for identifying the methods to be used by the lender district to ensure the financial integrity of a loan to an individual borrower. Such methods may include, but not be limited to, an irrevocable letter of credit or a lien on property in excess of value of improvements; and
- (6) the executive administrator may request additional information necessary to evaluate the loan application.

(7) a certified copy of the resolution adopted by the governing body approving the application with the board for a loan or conservation loan, authorizing the submission of the application and designating the authorized representative for executing the application.

§367.46. Approval of Applications.

The board may approve an application if, after considering the factors in Texas Water Code, §17.898, and other relevant factors, the board finds that:

- (1) the public interest would be served in granting the application;
- (2) a lender district has the ability to make conservation loans, manage a conservation loan program, and repay the loan to the board;
- (3) a borrower district has the ability to repay the conservation loan; and
- (4) approving the application will further water conservation in the state.

§367.47. Priority in Expenditure of Funds.

When applications for conservation loans or loans exceed available funds, priority will be given to those areas of the state that have the most critical water conservation needs and to the activities that will be most likely to produce substantial agricultural soil and water conservation.

§367.48. Engineering Requirements.

For all projects for borrower districts which will receive financial assistance from the proceeds of bonds under the Agricultural Water Conservation Bond Program, for which the district will enter into construction contracts, the following requirements will apply.

(1) Prior to receiving a loan commitment, the applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, shall provide:

- (A) description and purpose of the project;
- (B) the cost of the project;
- (C) a description of alternatives considered and reasons for the selection of the project proposed;
- (D) sufficient information to evaluate the engineering feasibility; and
- (E) maps and drawings as necessary to locate and describe the project area. The executive administrator may request additional information or data as necessary to evaluate the project.

(2) A borrower district shall obtain executive administrator approval of contract documents, including engineering plans and specifications, prior to receiving bids and awarding the contract. The district shall submit three copies of contract documents; which shall be as detailed as would be required for submission to contractors bidding on the work, and which shall be consistent with the engineering feasibility information submitted with the application. The contract documents must contain the following:

- (A) provisions assuring compliance with the board's rules and all relevant statutes;
- (B) provisions providing for the district to retain a minimum of 5.0% of the progress payments otherwise due to the

contractor until the building of the project is substantially complete and a reduction in the retainage is authorized by the executive administrator;

(C) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board; and

(D) any additional conditions that may be requested by the executive administrator.

(3) After the construction contract is awarded, the borrower district shall provide for adequate inspection of the project by a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and in accordance with sound engineering principles and construction practices. The executive administrator is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the State of Texas to any action for damages. The borrower district shall take corrective action as necessary to complete the project in accordance with approved plans and specifications.

(4) Any substantial alteration which involves a change in the basic purpose of a project, or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. All other changes must be approved by the executive administration.

(5) Upon notice from the borrower district and project engineer that the project was completed in accordance with approved plans and specifications, the executive administrator shall issue a certificate of completion. This certificate shall be called a certificate of approval.

(6) After issuance of a certificate of approval the final release of retainage may be made.

§367.49. Environmental Assessment.

(a) Environmental requirements for borrower districts. For any borrower district project which will require erecting, building, altering, remodeling, improving or extending a water supply project and which will require surface or subsurface disturbance of the soil or alter the existing vegetation, the district will conduct an environmental assessment in accordance the following provisions.

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

(1) Environmental regulation - The acts, statutes, or policies listed in subsection (d)(1) of this section and the acts, statutes, or policies identified by the executive administrator pursuant to subsection (d)(2) of this section.

(2) Regulatory agency - The governmental agency with the jurisdiction to review compliance with or to enforce an environmental regulation.

(3) Preliminary project information - The information submitted by an applicant to the executive administrator pursuant to subsection (f) of this section.

(4) Affected environmental regulation - An environmental regulation with which a proposed project potentially may not conform as determined by the executive administrator under this section after reviewing the preliminary project information or the environmental assessment document, if any.

(5) Unaffected environmental regulation - An environmental regulation with which a proposed project will likely conform as determined by the executive administrator under this section after reviewing the preliminary project information or the environmental assessment document, if any.

(c) Applicability and purpose. This section applies to projects funded by the board under this title. The purpose of this section is to provide the executive administrator with sufficient information to inform the board whether a proposed project has been adequately reviewed by the regulatory agencies and whether such review provides a reasonable level of certainty that the project will comply with the environmental regulations.

(d) Applicable environmental regulations.

(1) Uniform requirements. Prior to commitment of funds, the proposed project shall be coordinated, to the extent appropriate under the three-level review of subsection (g) of this section, with the regulatory agencies to determine the degree of compliance with the following:

(A) Texas Antiquities Code as administered by the Texas Historical Commission;

(B) Federal Endangered Species Act as administered by the United States Fish and Wildlife Service;

(C) resource protection under the Texas Parks and Wildlife Code and 31 TAC Chapter 57, as administered by the Texas Parks and Wildlife Department; and

(D) Clean Water Act, §404 and Rivers and Harbors Act, §10 as administered by the United States Department of the Army, Corps of Engineers.

(2) Conditional requirements. Proposed projects under certain circumstances may impact other environmental acts, statutes, or policies requiring additional coordination, to the extent appropriate under subsection (g) of this section. The executive administrator may require an applicant to perform such additional coordination for the following environmental regulations:

(A) Migratory Bird Treaty Act as administered by the United States Fish and Wildlife Service;

(B) National Flood Insurance Act of 1968 as administered by the local floodplain protection manager.

(C) state land easements under Texas Natural Resources Code, Chapter 51, as administered by the Texas General Land Office;

(D) parks and recreational lands pursuant to the Texas Parks and Wildlife Code, Chapter 26;

(E) marl, sand, gravel, shell, and mudshell permits under the Texas Parks and Wildlife Code, Chapter 86, and 31 TAC Chapter 57 as administered by the Texas Parks and Wildlife Department; and

(F) any other act, statute, or policies deemed applicable by the executive administrator.

(e) Filing of assessment or statement. If an agency of the state or federal government prepares or requires an environmental assessment or an environmental impact statement to be prepared for substantially the same project proposed for board financial assistance, then the applicant shall file with the executive administrator the assessment or the statement prepared or required by the state or federal government, and a copy of the state or federal agency's

issued decision document or permit in lieu of the information or environmental assessment prepared in accordance with subsections (f) or (g) of this section. Nothing herein shall be construed to require an applicant to prepare an environmental assessment when the information required under this section is currently available in an environmental assessment, environmental impact statement, or other documents prepared in connection with the same project.

(f) Preliminary project information. Prior to or concurrently with the submission of an application, the applicant shall submit the following information:

- (1) a written description of the proposed project;
- (2) a map of sufficient detail to accurately depict the location of each project element; and
- (3) preliminary data on any known environmental, social, and permitting issues which may affect the alternatives considered for implementation of the project or which may impact the existing environment in a manner that is the subject of any environmental regulation.

(g) Environmental review. Based on the preliminary project information and any information readily available to the executive administrator, the executive administrator shall require the applicant to comply with the provisions of this subsection for either categorical exclusion review, mid-level review, or full review depending on the complexity of the project and its environmental impacts. Upon submission by the applicant of the information required by this subsection, the executive administrator shall summarize all relevant environmental data and any regulatory agency comments and public comments received regarding the proposed project in a memorandum. Such memorandum shall include a finding regarding the proposed project's compliance with the environmental regulations and may include a recommendation on any avoidance, minimization, or mitigation measures recommended by a regulatory agency through this review process. Such memorandum shall be submitted to and considered by the board with the application for financial assistance.

(1) Categorical exclusion. If the executive administrator determines from the preliminary project information that the proposed project would not appear to cause significant environmental impacts under any environmental regulation, the executive administrator shall notify all regulatory agencies of the executive administrator's intent to exclude the proposed project from further environmental review. Unless an objection is received from any regulatory agency within 30 days after such notification is sent by the executive administrator, the executive administrator shall notify the applicant that the proposed project is categorically excluded from further environmental review requirements.

(2) Mid-level review. If the executive administrator determines from the proposed project information that the proposed project would appear to cause only significant environmental impacts which are limited in number or scope or which may be readily avoided, minimized, or mitigated, the proposed project shall be excluded from further review of unaffected environmental regulations while additional information for adequate review of affected environmental regulations shall be required in accordance with the following procedures.

(A) The executive administrator shall:

(i) notify the regulatory agencies administering the unaffected environmental regulations of the executive administrator's intent to exclude the proposed project from further review of the unaffected environmental regulations. Unless the executive administrator receives objections to the intent to exclude the project

from review by such agency within 30 days after such notification is sent, the executive administrator shall deem the proposed project as excluded from further review of such unaffected environmental regulation; and

(ii) promptly notify the applicant of the unaffected environmental regulations which shall be excluded from further environmental review, the affected environmental regulations which shall require further environmental review, and any further information required by statute or the regulatory agencies administering the affected environmental regulations for adequate environmental review.

(B) The applicant shall then choose between one of the two following options and promptly notify the executive administrator of the option selected:

(i) the applicant shall coordinate with the regulatory agencies administering the affected environmental regulations as identified pursuant to subsection (g)(2)(A)(ii) of this section, provide to the executive administrator copies of all information submitted by the applicant to such regulatory agencies, provide to the executive administrator copies of all documents received by the applicant from such regulatory agencies regarding the proposed project and, if the executive administrator has determined that it is an affected environmental regulation, documentation establishing compliance with Texas Parks and Wildlife Code, Chapter 26; or

(ii) the applicant shall provide to the executive administrator the information required by the regulatory agencies administering the affected environmental regulations for their review and, if the executive administrator has determined that it is an affected environmental regulation, documentation establishing compliance with Texas Parks and Wildlife Code, Chapter 26 whereupon the executive administrator shall coordinate the project review with such regulatory agencies and provide to the applicant copies of all documents received from such regulatory agencies regarding the proposed project.

(3) Full review. If the executive administrator determines from the proposed project information that the proposed project would appear to cause extensive significant impacts that are not readily avoided, minimized, or mitigated or would appear to involve a probable or known significant public controversy relating to environmental or social impacts, the following procedure shall apply:

(A) the applicant shall prepare an environmental assessment document which shall include all the information required by the regulatory agencies for adequate review by such agencies, a technical description of all the alternatives to the proposed project considered by the applicant, and a discussion of the proposed project's impact on environmental, social, and economic issues compared to such impacts of the alternatives considered;

(B) upon approval by the executive administrator of the environmental assessment document, the executive administrator will provide notification regarding the unaffected environmental regulations in accordance with the procedures under subsection (g)(2)(A) of this section; and

(C) the applicant shall submit the approved environmental assessment document to the regulatory agencies administering the affected environmental regulations for review and comment and provide to the executive administrator copies of all the documents received by the applicant from the regulatory agencies regarding the proposed project and, if the executive administrator has determined that it is an affected environmental regulation, documentation establishing compliance with Texas Parks and Wildlife Code, Chapter 26. Alternatively, the applicant may request that the executive administra-

tor submit the environmental assessment document to such agencies and, upon completion of such coordination, the executive administrator shall provide to the applicant copies of all documents received from such regulatory agencies regarding the proposed project.

(4) Project change. If the project is changed to include areas or issues that were previously unassessed, then the environmental review process identified in this section shall be employed for such unassessed areas or issues and the executive administrator shall determine the appropriate level of review for such changed project.

(5) Review change. If, at any time prior to the submission of an application to the board and upon reliable information, the executive administrator determines that the level of review being performed for a proposed project is inappropriate or that the determination that an environmental regulation was an unaffected environmental regulation was incorrect, the executive administrator shall promptly notify the applicant of the required level of review under this section or of the affected environmental regulation for which additional review is required.

§ 367.50. Default and Foreclosure by Lender Districts.

(a) In the event of a default in payment of a conservation loan made by a lender district or the failure of an individual borrower to perform any of the terms or conditions of the conservation loan agreement, the lender district shall pursue all remedies available under law, including without limitation foreclosure under the conservation loan agreement and liquidation of any collateral provided under the conservation loan agreement. The lender district shall sell the collateral on terms and subject to procedures that it follows in liquidating other collateral.

(b) Foreclosure under a conservation loan agreement shall be accomplished in the manner provided by law for foreclosure of similar loan agreements made by private lending institutions and by the conservation loan agreement.

(c) The state guarantees to each lender district that in the event an individual borrower defaults on a conservation loan made by the lender district with money from this program, the state will assume 50% of the amount that remains due and payable under the default after all collateral for the conservation loan is liquidated.

(d) The state is entitled to recover its pro rata share of any money recovered on a defaulted conservation loan on which the state has assumed liability under subsection (c) of this section.

§367.51. Reporting Requirements.

(a) The executive administrator may request certified copies of all minutes, operating budgets, monthly operating statements, contracts with borrowers, audit reports and other documents concerning the operation of the district's financial programs and this loan program.

(b) At the end of each state fiscal year, the lender shall provide to the executive administrator a report on the loans made to borrowers during the preceding state fiscal year, in a format specified by the executive administrator. The executive administrator may request and the lender shall supply similar reports at other times as necessary.

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

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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### Subchapter C. Pilot Program for Low Interest Loans for Agricultural Water Conservation Equipment

#### 31 TAC §§367.41-367.50

*(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 Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

Chapter 17, Subchapter J and Chapter 15, Subchapter G are the statutory provisions affected by the proposed repeals.

§367.41. *Purpose.*

§367.42. *Applicants Eligible for Loans.*

§367.43. *Borrowers.*

§ 367.44. *Equipment and Costs Eligible for Loans.*

§367.45. *Applications.*

§367.46. *Review and Approval of Application.*

§367.47. *Priority on Approval of Loans.*

§ 367.48. *Lender Loan Limits.*

§367.49. *Terms of Lender Contract.*

§367.50. *Audits.*

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

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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### Subchapter D. Agricultural Water Conservation Loan Program

#### 31 TAC §§367.70-367.79

*(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 Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

Chapter 17, Subchapter J and Chapter 15, Subchapter G are the statutory provisions affected by the proposed repeals.

§367.70. *Policy Statement.*

§367.71. *Definitions.*

§ 367.72. *Purpose.*

§367.73. *Guidelines.*

§ 367.74. *Procedure and Method for Setting Interest Rates.*

§367.75. *Applications.*

§367.76. *Review and Approval of Applications.*

§367.77. *Priority in Expenditure of Funds.*

§367.78. *Default and Foreclosure by Lender Districts.*

§367.79. *Audits.*

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

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## Chapter 371. Drinking Water State Revolving Fund

### Subchapter A. Introductory Provisions

#### 31 TAC §371.2

The Texas Water Development Board (board) proposes amendments to §§371.2, 371.18, 371.20, 371.21, 371.23-371.26, 371.32, 371.35, 371.38, 371.40, 371.52, 371.71, 371.72 and 371.101. The amendments implement the board's Drinking Water State Revolving Fund Program (DWSRF) and establish procedures for borrowers to follow in providing Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), Small Business Enterprises (SBE), and Small Business Enterprises in a Rural Area (SBRA) with opportunities to participate in contracts and procurements that are funded in whole or part with federal monies. Additionally, the amendments provide clarification to existing provisions of Chapter 371 that include deadlines for submittal of applications for assistance, information to be provided for establishing loan subsidies for disadvantaged communities, and lending rates for certain borrowers. The amendments also correct grammatical errors and amend references to sections which have been repealed.

Section 371.2, Definition of Terms, is proposed for amendment to replace "a" with "an" and to correct the form of a verb. Section 371.18, Capitalization Grant Requirements for Applicants, proposes a new subsection which defines terms of the affirmative action program, including MBE, WBE, SBE and SBRA, and Affirmative Action Steps. The subsection further establishes the requirements that applicants for federal assistance must meet in order to afford MBE's, WBE's, SBE's and SBRA's the maximum practicable opportunity to participate in the DWSRF program. financial assistance programs establishing requirements for Minority Business. The amendments to §371.18 are proposed to conform to the standards and requirements of the U.S. Environmental Protection Agency (EPA) that have been set for contracts and procurements funded from capitalization grant award.

Section 371.20, Intended Use Plan, is proposed for amendment to make a grammatical correction. Section 371.21, Criteria and Methods for Distribution of Funds for Water System Improvements, is proposed for amendment to clarify that although applicants have six months to receive a commitment for assistance, applications must be complete and ready for consideration within four months of being asked to submit an application. The section further clarifies that these time lines apply during subsequent funding cycles, after projects are re-ranked and new applications are solicited. The section is further amended to clarify that the executive administrator will notify the potential applicants and that remaining funds will be made available to other population classes.

Section 371.23, Criteria and Methods for Distribution of Funds for Source Water Protection, is proposed for amendment to correct "applicants" with the word "applications." Section 371.24, Disadvantaged Community Program through Loan Subsidies, is proposed for amendment to clarify the formula for calculating the adjusted median household income. Further, the section informs applicants that the necessary information in the calculation will be provided by the board during the solicitation for applications process. The section also corrects cites to rule subsections and headings.

Section 371.25, Criteria and Methods for Distribution of Funds for Disadvantaged Communities, is proposed for amendment to clarify that funds are to be "made available" rather than "reserved" and that the funds will be "distributed" rather than "reserved." The section is further amended to clarify deadlines for the submission of applications during each of the funding cycles. The section further clarifies that applications which have not received a commitment within the prescribed time will be returned to the applicant.

Section 371.26, Criteria and Methods for Distribution of Funds from Community/ Noncommunity Water Systems Financial Assistance Account, is proposed for amendment to correct grammatical errors and to clarify time lines that applicants must follow to submit an application and receive a commitment for financial assistance during the initial and subsequent funding cycles.

Section 371.32, Required Application Information, is proposed for amendment to clarify application requirements for "eligible nonprofit noncommunity" applicants that are also eligible public applicants and for "eligible nonprofit noncommunity" applicants that are not eligible public applicants. The section also clarifies "consultant services" as financial advisory, engineering, and bond counsel. Section 371.35, Required Environmental Review and Determinations, corrects the term "loan agreement" by replacing it with "loan commitment."

Section 371.38, Pre-Design Funding Option, is proposed for amendment to correct a cite to a section of the rules.

Section 371.40, Promissory Notes and Loan Agreements with Nonprofit Water Supply Corporations, Eligible Nonprofit Noncommunity Water Systems, and Eligible Private Applicants, is proposed for amendment to state that only nonprofit noncommunity water systems that are not eligible public applicants may issue a promissory note and enter into a loan agreement. The section clarifies that a governmental applicant that is authorized to issue bonds may not enter into a loan agreement. The section further restates to clarify that the executive administrator may waive the requirement of a financial advisor for applicants that use the promissory note and loan agreement method of financing.

Section 371.52, Lending Rates, is proposed for amendment to refer Nonprofit noncommunity borrowers that issue tax-exempt obligations and that operate community/noncommunity water systems to the subsections that address their lending rates.

Section 371.71, Loan Closing, is proposed for amendment to clarify that refinancing of construction loans pertains for a constructed project. The section further adds that the applicant shall submit any additional information deemed necessary by the executive administrator.

Section 371.72, Release of Funds, simplifies required application materials by decreasing the required number of copies of each construction contract.

Section 371.101, Responsibilities of Applicant, is proposed for amendment to clarify the time period (adoption to 3 years after project completion) from which implementation and status of the water conservation program must be reported.

Patricia Todd, Director of Accounting & Finance, has determined that for each year of the first five years that the sections are in effect there will be no additional cost to State government for 1998 and 1999. If the legislature grants an additional FTE to the board to administer the new sections, the additional cost to State government for each of the years 2000, 2001, and 2002 will be \$45,000. The additional costs are for direct payroll costs and do not include indirect costs such as telephone, supplies, training, and computer supplies estimated to be about \$4,000 per year. Additional fringe benefits at about 24% of direct costs would be incurred. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Todd also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that the Drinking Water SRF program complies with the U.S. Environmental Protection Agency's guidelines on procurement practices relating to opportunities for minority and women's businesses and small businesses. A further public benefit is to provide additional information on the Drinking Water SRF program to prospective applicants for financial assistance. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Gail Allan, 512/463-7804, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.2. *Definitions of Terms.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by Chapter 15.

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

(4) Affiliated interest or affiliate -

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of an [a] eligible private applicant;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of an [a] eligible private applicant;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by an [a] eligible private applicant;

(D) (No change.)

(E) any person who is an officer or director of an [a] eligible private applicant or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of an [a] eligible private applicant;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of an [a] eligible private applicant or over which an [a] eligible private applicant exercises such control or that is under common control with an [a] eligible private applicant, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) (No change.)

(5)-(45) (No change.)

(46) Nonprofit noncommunity (NPNC) water system - A public water system that is not a community water system and that is owned and operated by a nonprofit organization.

(47)-(59) (No change.)

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

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Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: September 17, 1998

For further information, please call: (512) 463-7981

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## Subchapter B. Program Requirements

### 31 TAC §§371.18, 371.20, 371.21, 371.23–371.26

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

#### §371.18. Capitalization Grant Requirements for Applicants.

(a) All projects which receive assistance from the fund under this chapter shall satisfy the following federal requirements as they apply:

- (1) National Environmental Policy Act of 1969, PL 91-190;
- (2) Archeological and Historic Preservation Act of 1974, PL 93-291;
- (3) Clean Air Act, 42 U.S.C. 7506(c);
- (4) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.;
- (5) Coastal Zone Management Act of 1972, PL 92-583, as amended;
- (6) Endangered Species Act, 16 U.S.C. 1531, et seq.;
- (7) Executive Order 11593, Protection and Enhancement of the Cultural Environment;
- (8) Executive Order 11988, Floodplain Management;
- (9) Executive Order 11990, Protection of Wetlands;
- (10) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.;
- (11) Fish and Wildlife Coordination Act, PL 85-624, as amended;
- (12) National Historic Preservation Act of 1966, PL 89-665, as amended;
- (13) Safe Drinking Water Act, §1424(e), PL 92-523, as amended;
- (14) Wild and Scenic Rivers Act, PL 90-542, as amended;
- (15) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;
- (16) Section 306 of the Clean Air Act and §508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;
- (17) Age Discrimination Act, PL 94-135;
- (18) Civil Rights Act of 1964, PL 88-352;
- (19) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act;
- (20) Executive Order 11246, Equal Employment Opportunity;
- (21) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise;

(22) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);

(23) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646;

(24) Executive Order 12549, Debarment and Suspension; and

(25) The Wilderness Act, 16 U.S.C. 1131 et seq.

(b) Requirements for Minority Business Enterprise/Women's Business Enterprise/Small Business Enterprise/Small Business Enterprise in a Rural Area.

(1) Definitions. For the purposes of this subsection the following definitions shall apply.

(A) Construction - Notwithstanding the provisions of §371.2 of this title (relating to Definition of Terms), any contract or agreement to provide the building, erection, alteration, remodeling, improvement or extension of a DWSRF funded project.

(B) Contract - A written agreement between an EPA recipient and another party and any lower tier agreement for equipment, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.

(C) Equipment - Tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

(D) MBE - A Minority Business Enterprise, a business concern that is:

(i) at least 51% owned by one or more minority individuals who are U. S. Citizens, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority individuals who are U. S. Citizens; and

(ii) whose daily business operations are managed and directed by one or more of the minority owners. Minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans or other groups whose members have been found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under Executive Order 11625, §5.

(E) Prime contract - Any contract, agreement or other action entered into by a DWSRF applicant to procure construction, services, equipment or supplies.

(F) SBE - A Small Business Enterprise, a business concern, including its affiliate, that is independently owned and operated, not dominant in the field of operation in which it operates, and that is qualified as a small business by the Small Business Administration.

(G) SBRA - A Small Business Enterprise in a Rural Area, a small business concern that is located and conducts its principal operations in a "non-metropolitan county" as delineated by the Small Business Administration.

(H) Services - A contractor's time and efforts which do not involve delivery of a specific end item other than documents (e.g. reports, design drawings, specifications, etc.).

(I) Subcontract - Any contract, agreement or other action to procure construction, services, equipment or supplies between a prime contractor and any other business to supply such goods or services for a DWSRF financial assistance action.

(J) Supplies - All tangible personal property other than equipment.

(K) WBE - A Women's Business Enterprise, a business concern that is:

(i) at least 51% owned by one or more women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more women; and

(ii) whose daily business operations are managed and directed by one or more of the women owners.

(2) Affirmative action steps - Those steps necessary by the applicant and the prime contractor to ensure that MBEs, WBEs, SBEs and SBRAs are utilized when possible including:

(A) placing qualified MBEs, WBEs, SBEs and SBRAs on solicitation lists;

(B) assuring that MBEs, WBEs, SBEs and SBRAs are solicited whenever they are potential sources;

(C) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBEs, WBEs, SBEs and SBRAs;

(D) establishing delivery schedules, where the requirement permits, which encourage participation by MBEs, WBEs, SBEs and SBRAs;

(E) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(F) requiring the prime contractor, if subcontracts are to be let, to take the affirmative action steps listed in subparagraphs (A) thru (E) of this paragraph.

(3) Requirements for Applicants.

(A) Pursuant to EPA policy a goal oriented system has been established to promote MBE and WBE participation on all projects receiving funds from the DWSRF. In addition, it is the intent that SBEs and SBRAs be afforded the maximum practicable opportunity to participate in EPA awarded financial assistance programs.

(B) Prior to receiving a loan commitment the applicant will submit an affirmative action plan on forms provided by the board. The plan shall be signed by the authorized representative of the applicant and shall contain estimates and/or actual amounts of MBE and WBE participation in the categories of construction, services, equipment, or supplies. Copies of any existing or proposed MBE and WBE contracts should be attached.

(C) In all procurements, the applicant will undertake a good faith effort to attract and utilize MBE, WBE, SBE and SBRAs participation. This may include, but not be limited to taking the six affirmative action steps.

(D) In all procurements, the applicant will include provisions in prime contracts requiring the prime contractors to submit an affirmative action plan, and to undertake a good faith effort to attract and utilize MBEs, WBEs, SBEs and SBRAs, through subcontracts. This may include but not be limited to taking the affirmative action steps described in paragraphs (2)(A) through (2)(E) of this subsection.

(E) As a condition to the release of funds or at any other time contracts or subcontracts are entered into, the applicant will

report MBE and WBE participation and will provide documentation of good faith efforts on forms provided by board staff.

(F) The applicant and the prime contractor(s) will maintain all records documenting required good faith efforts.

§371.20. Intended Use Plan.

(a) (No change.)

(b) The process for listing projects in the intended use plan, will be as follows.

(1) On or before 1 April of each year the executive administrator will solicit project information from eligible applicants desiring to have their projects placed on the subsequent year's intended use plan. The required information will consist of:

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

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

§371.21. Criteria and Methods for Distribution of Funds for Water System Improvements.

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

(d) Applicants must submit complete applications within four months of being invited to submit.

(e) [(d)] If, after six months from the date of invitation to submit applications, all available funds are not committed, the executive administrator will return any [incomplete] applications which have not received a commitment and move all projects for which no applications, [or] incomplete applications or complete applications were submitted to the bottom of the prioritized list, where they will be placed in priority order.

(f) [(e)] Following the re-ranking of the list a line will again be drawn not to exceed the amount of remaining funds available in accordance with subsection (b) of this section.

(g) [(f)] Projects above the line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants of the availability of funds and will invite the submittal of applications.

(h) Applicants must submit complete applications within four months of being invited to submit.

(i) [(g)] If, after six months from the second date of invitation to submit applications, the remaining funds are not committed the executive administrator will return any [incomplete] applications which have not received a commitment. Except for funds for disadvantaged communities projects, any funds remaining that exceed the amount needed to fund complete applications will be made available for the next fiscal year. Funds for disadvantaged communities projects shall remain available for commitment in accordance with §371.25 of this title, (relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities).

(j) [(h)] If, at any time during either six month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the line may be moved downward in priority order to accommodate projects which would utilize the funds that would otherwise not be committed during the particular six month period. The executive administrator will notify such additional potential applicants in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four [six] months to submit an application and six months from the date of notification to receive a loan commitment.



(k) [(j)] Applications for assistance may be submitted at any time within four months after notification by the executive administrator of the availability of funds and will be funded on a first come, first served basis. Funds shall be committed to a project designated to receive assistance upon board approval of the application.

(l) [(j)] If funds are available after the executive administrator is able to make a determination that all applicants in a population class have had the opportunity to be funded, the remaining funds will be made available to the other population classes [class].

§371.23. *Criteria and Methods for Distribution of Funds for Source Water Protection.*

(a)-(d) (No change.)

(e) Applications [Applicants] for assistance may be submitted at any time after notification by the executive administrator of the availability of funds and will be funded on a first-come, first-served basis. Funds shall be committed to a project designated to receive assistance upon board approval of the application.

(f)-(g) (No change.)

§371.24. *Disadvantaged Community Program through Loan Subsidies.*

(a) (No change.)

(b) Definition of Disadvantaged Community.

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

(7) The adjusted median household income is calculated as the 1990 annual median household income multiplied by the Texas Consumer Price Index [for the month preceding the month that project information is solicited for the intended use plan] divided by the 1990 Texas Consumer Price Index. The necessary information will be provided by the board to the applicant during the solicitation process.

(8) (No change.)

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

(e) Term of Loan. Notwithstanding the provisions of §371.12 (1)(B) [§371.12] this title (relating to Uses of the Fund [Definition of Terms]), the board may extend the term of a loan made through the Disadvantaged Community Account of the DWSRF if the extended term terminates not later than the date that is 30 years after the date of project completion and does not exceed the expected design life of the project.

(f)-(g) (No change.)

§371.25. *Criteria and Methods for Distribution of Funds for Disadvantaged Communities.*

(a) The board will determine annually amount of capitalization grant funds to be made available [reserved] for projects for disadvantaged communities and will include this information in the intended use plan, provided however that no more than 30% of any capitalization grant can be so distributed [reserved].

(b) (No change.)

(c) After projects have been ranked, a funding line will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects

above the funding line must submit applications for assistance, as defined, within four [six] months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the disadvantaged community account after the four [six] month period has expired without affecting the priority status of the application. Applicants for funding from the disadvantaged community account will be allowed 12 months after submittal of an application to receive a loan commitment.

(d) Applicants for funding from the disadvantaged community account above the funding line which do not submit applications before the four [six] month deadline will be moved to the bottom of the priority list in priority order.

(e) If after six months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available [set aside] for disadvantaged communities, the executive administrator will return any [incomplete] applications which did not receive a commitment and move all projects for which no applications, [or] incomplete applications or complete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(f) (No change.)

(g) Projects above the funding line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the disadvantaged community account of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within four [six] months of the second date of notification of the availability of funds. Applicants for funding from the disadvantaged community account will be allowed 12 months after submittal of an application to receive a loan commitment.

(h) If, after six months of the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available [set aside] for disadvantaged communities, the executive administrator will return any [incomplete] applications which did not receive a commitment. Any funds remaining that exceed the amount needed to fund completed applications will be made available for the next fiscal year, subject to the limitations of subsection (a) of this section. [transferred from the fund for disadvantaged communities to the fund for large and small communities.]

(i) If, at any time during either six month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding from the disadvantaged community account in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four [six] months to submit an application. Applications for funding from the disadvantaged community account will be allowed 12 months after submittal of an application to receive a loan commitment.

(j) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within

12 months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list and the application returned to the applicant.

§371.26. *Criteria and Methods for Distribution of Funds from Community/ Noncommunity Water Systems Financial Assistance Account.*

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

(c) After the executive administrator determines the amount of funds available for community/noncommunity water systems financial assistance account from capitalization grant reserves, state match, or any other sources, the funds available from this account will be applied to the list of systems that serve fewer than 10,000 persons and the list of systems that serve 10,000 and over persons in accordance with §371.21(a) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). All projects will be listed in priority ranking order as determined by §371.19 of this title (relating to Rating Process). The projects of eligible private applicants or eligible NPNC applicants [~~applicant~~] assigned identical rating scores will be listed in alphabetical order. In the event that one or more projects of eligible private applicants or eligible NPNC applicants have rating scores identical to the rating scores of applicants that are not disadvantaged communities as defined in this chapter, such private or NPNC applicants will be listed above the non-disadvantaged communities on the priority list. In the event that one or more projects of eligible private applicants or eligible NPNC applicants have rating scores identical to the rating scores of applicants that are disadvantaged communities as defined in this chapter, such private or NPNC applicants will be listed below the disadvantaged communities on the priority list.

(d) After projects have been ranked, a funding line will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, eligible private applicants and eligible NPNC applicants above the funding line must submit applications for assistance, as defined, within four [six] months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the community/ noncommunity water system financial assistance account after the four [six] month period has expired without affecting the priority status of the application. Applicants for funding from the community/ noncommunity water system financial assistance account will be allowed six months after submittal of an application to receive a loan commitment.

(e) Applicants for funding from the community/noncommunity water system financial assistance account above the funding line which do not submit applications before the four [six] month deadline will be moved to the bottom of the priority list in priority order.

(f) If after six months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available [set aside] for community/noncommunity water systems financial assistance account or all available funds are not committed, the executive administrator will return any [~~incomplete~~] applications and move all projects for which no applications, [~~or~~] incomplete applications or complete applications were submitted to

the bottom of the priority list, where they will be placed in priority order.

(g) Following the re-ranking of the priority list, a line will again be drawn not to exceed the amount of funds available, in accordance with the criteria of subsection (c) of this section.

(h) Projects above the funding line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the community/noncommunity water system financial assistance account of the availability of funds and will invite the submittal of applications. In order to receive funding, the eligible private applicants or eligible NPNC applicants with projects above the funding line must submit applications for assistance, as defined within four [six] months of the date of notification of the availability of funds. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed six months after submittal of an application to receive a loan commitment.

(i) If, after six months from the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available [set aside] for community/noncommunity water systems or all available funds are not committed, the executive administrator will return any incomplete or complete applications.

(j) If, at any time during either six month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four [six] months to submit an application.

(k) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within six months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list and the application will be returned to the applicant.

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

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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## Subchapter C. Application for Assistance

### 31 TAC §§371.32, 371.35, 371.38, 371.40

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.32. *Required Application Information.*

(a) For eligible public applicants and eligible NPNC applicants that are also eligible public applicants, an application shall be in the form and numbers prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

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

(3) copies of any proposed or existing contracts for consultant financial advisory, engineering, and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(4)-(9) (No change.)

(b) For eligible private applicants and eligible NPNC applicants that are not also eligible public applicants, an application shall be in the form and numbers prescribed by the executive administrator, and, in addition to any other information that may be required by the executive administrator or the board, such applicant shall provide:

(1)-(5) (No change.)

(6) copies of [any] proposed or existing contracts for consultant financial advisory, engineering, and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project and included as part of the total cost of the project. Contracts with consulting engineers shall include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(7)-(13) (No change.)

§371.35. *Required Environmental Review and Determinations.*

(a) General. The applicant's preparation of the environmental information and the executive administrator's review and issuance of a determination forms an integral part of the planning process required of any potential applicant to the fund. There are three levels of environmental information required, varying according to the nature and scope of the project and the environment in which it is proposed. Correspondingly, the appropriate level of review will be conducted by the board and formal determinations documenting the review are issued. The categorical exclusion (CE) is directed toward those applicants proposing only minor rehabilitation or functional replacement of existing equipment. Although the environmental information required is small, the proposed project must fit a narrow range of criteria defined in paragraph (1)(A) of this subsection. The CE must be revoked and an environmental information document (EID) must be prepared if the project is subsequently modified so as to exceed the limits of the criteria. The majority of applicants will prepare an EID, developed in accordance with guidance available from the board. In addition to a greater amount of information to be supplied by the applicant, a public hearing must be held on the proposed project and the determination, a finding of no significant impact (FNSI), is also subject to public comment for a period not less than 30 days following its issuance. All applicants whose proposed projects do not meet the criteria for either a CE or environmental impact statement (EIS) must prepare an EID. Although there are other criteria involved, as described in paragraph (1)(C) of this subsection and subsection (d)(3) of this section, an EIS is usually required of those projects that are so major in scope or involve such environmentally sensitive areas (i.e., floodplains, endangered species habitat, etc.) that the proposed project may have significant adverse social or environmental impacts.

An EIS requires close coordination and involvement of the board and other agencies in its preparation and results in a record of decision (ROD). The board's staff shall endeavor to provide guidance as to the appropriate level of environmental information to applicants during the pre-planning process. All applicants are urged, however, to review the criteria and contact the board's staff, particularly if there is doubt as to the level of environmental information that is appropriate to the proposed project. Based on the environmental information, the executive administrator will conduct an independent and interdisciplinary environmental review consistent with the National Environmental Policy Act (NEPA) of all projects funded through the DWSRF. This review will further insure that the proposed project will comply with the applicable local, state, and federal laws and board rules relating to the protection and enhancement of the environment. Based upon the staff's review, the executive administrator will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determinations will include mitigative provisions recommended to be applied as a condition of receiving financial assistance. Funds will not be released for building until a final environmental determination has been made. Proposed projects using the pre-design funding option will follow the environmental review procedures described under paragraph (2)(C) of this subsection.

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

(3) Other determinations that are available to the board.

(A) The executive administrator may adopt previous environmental determinations issued by the EPA and other federal agencies whose determinations may be considered to be current and applicable under the environmental review requirements of this section. In so doing, the executive administrator will insure that all mitigative measures specified in the previous determinations are applied as conditions of the loan commitment [agreement] and that such adoption will be consistent with the requirements of these rules. The executive administrator will adopt the previous determination by means of a statement of findings, when the proposed project and its previous determination are to be adopted without substantial modifications, or in a FNSI which will explain modifications to the proposed project, potential environmental impacts identified during an environmental review, and any mitigative measures proposed in addition to those included in the federal environmental determination to be adopted.

(B) (No change.)

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

§371.38. *Pre-Design Funding Option.*

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

(c) Applications for pre-design funding must include the following information:

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

(4) all information required in §371.32 [~~§§371.32-371.34~~] of this title (relating to Required General Information, Required Fiscal Data, and Required Legal Data, respectively), - and

(5) (No change.)

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

§371.40. *Promissory Notes and Loan Agreements with Nonprofit Water Supply Corporations, Eligible Nonprofit Noncommunity Water Systems, and Eligible Private Applicants.*

(a) The board may provide financial assistance to corporations, eligible NPNC applicants that are not also eligible public

applicants, or eligible private applicants by either purchasing bonds issued by such applicant; or by purchasing a promissory note and entering into a loan agreement with such applicant. If, however, an applicant is a governmental entity that is fully authorized to issue bonds, the applicant may not enter into a loan agreement as provided in this section.

(b) If a corporation, eligible NPNC applicant, or eligible private applicant executes a promissory note and loan agreement with the board, the executive administrator may waive the hiring or employment of a financial advisor required pursuant to these rules. [such applicant is not required to engage the services of a bond counsel or a financial advisor.]

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

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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## Subchapter D. Board Action on Application

### 31 TAC §371.52

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.52. *Lending Rates.*

(a)-(d) (No change.)

(e) NPNC borrowers. NPNC borrowers that issue tax-exempt obligations and that operate community/noncommunity water systems will receive interest rates pursuant to subsections (a), (b), and (c) of this section.

(f) [(e)] The development fund manager may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on July 16, 1998. Suzanne Schwartz General Counsel Texas Water Development 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.

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## Subchapter F. Prerequisites to Release of Funds

### 31 TAC §371.71, §371.72

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.71. *Loan Closing.*

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

(c) Refinancing construction loans. If the project includes the refinancing of a loan for a constructed project, the applicant shall submit any information deemed necessary by the executive administrator [ all of the items specified in subsection (a) of this section and any records, assurances, or appraisals] concerning the construction of the project. Additionally, the project must pass the executive administrator's inspection of the project.

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

§371.72. *Release of Funds.*

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

(c) Release of funds for building purposes. Prior to the release of funds for building purposes, the applicant shall submit for approval to the executive administrator the following documents:

(1) (No change.)

(2) one [two] executed original copy [copies] of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;

(3)-(7) (No change.)

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

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

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Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: September 17, 1998

For further information, please call: (512) 463-7981



## Subchapter H. Post Building Phase

### 31 TAC §371.101

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.101. *Responsibilities of Applicant.*

After the satisfactory completion of the project, the applicant shall be held accountable by the board for the continued validity of all representations and assurances made to the board. Continuing cooperation with the board is required. To facilitate such cooperation and to enable the board to protect the state's investment and the public interest, the following provisions shall be observed.

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

(4) Applicants shall maintain an approved water conservation program in effect until all financial obligations to the State have been discharged and shall report annually to the executive administrator on the implementation and status of the program upon the adoption of the program and [required water conservation programs] for three years after the date of project completion~~[loan closing]~~. If the executive administrator determines that the water conservation program is not in compliance with the approved water conservation plan, the applicants shall continue to supply annual reports beyond the three years until the executive administrator determines that deficiencies in the plan have been resolved. Annual reports prepared for the commission providing the information required by this subparagraph may be provided to the board to fulfill the board's reporting requirements.

(5) (No change.)

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

Filed with the Office of the Secretary of State, on July 17, 1998.

TRD-9811301

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: September 17, 1998

For further information, please call: (512) 463-7981



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 97. Security and Control

##### Subchapter A. Security and Control

###### 37 TAC §97.7

The Texas Youth Commission (TYC) proposes an amendment to §97.7, concerning custody and supervision rating. The amendments to this section will delete the reference to specific staff-to-TYC youth ratios.

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 amendment 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.

###### §97.7. Custody and Supervision Rating.

(a) Purpose. The purpose of this rule is to enhance the protection of the public by limiting exposure to potential harm caused by a TYC youth by establishing specific minimum staff ~~[per youth]~~ supervision requirements for certain youth in a TYC operated high restriction facility, both on and off the grounds. Higher risk ratings require increased staff supervision, restriction of youth movement, and restriction of access to the general public. ~~[unauthorized program areas and potentially harmful materials.]~~

(b) (No change.)

(c) Ratings.

(1) (No change.)

(2) A youth with a medium risk rating may leave the grounds for routine activities under specific conditions recommended by the treatment team. Constant supervision ~~[Supervision]~~ by staff is required. Activities shall not include overnight outings.

(3) (No change.)

(d) (No change.)

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

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

TRD-9811041

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 424-6244



## Part VI. Texas Department of Criminal Justice

### Chapter 163. Community Justice Assistance Division Standards

#### 37 TAC §163.39, §163.40

The Texas Department of Criminal Justice - Community Justice Assistance Division proposes an amendment to §163.39, concerning Residential Services and new §163.40, concerning Substance Abuse Treatment Standards.

The Substance Abuse Treatment Standards for the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice (TDCJ) have been developed, pursuant to the

Government Code, §509.003(a)(5), to provide standards for the operation of programs and facilities administered or funded by TDCJ-CJAD.

The purpose of the Substance Abuse Program Standards is to establish clear, concise, and uniform principles which will be used as a means to measure performance for all substance abuse treatment programs that are administered or funded by TDCJ-CJAD. This will be accomplished by providing minimum standards to ensure consistent and auditable operational procedures for the continuum of services.

In the programs administered or funded by TDCJ-CJAD, the goals are to:

1. provide guidelines for quality substance abuse programming throughout the continuum of care;
2. provide comprehensive, quality substance abuse treatment services;
3. provide guidelines for evaluating programs and cost-effectiveness of substance abuse programs; and
4. promote coordination in the delivery of substance abuse services among the community supervision and corrections departments in the state as well as with the divisions of the TDCJ and the agencies it funds.

The objectives of the Substance Abuse Standards are to:

1. develop uniform minimum operational standards for substance abuse programs in the areas of Facility Management, Treatment Process, Offender Management, Program Services, and the Physical Plant;
2. establish a set of terms, definitions, and credentials for staff;
3. develop standards that will provide a framework for measurable outcomes of substance abuse programs; and
4. improve communication between service providers, divisions, and departments involving substance abuse services for criminal offenders.

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

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to promote consistent, effective, and cost efficient programs of high quality for offenders who are under community supervision (probation). There will be no effect on small businesses. There is no anticipated economic cost to individuals required to comply with the sections as proposed.

Comments should be directed to Susan Cranford, Texas Department of Criminal Justice, Community Justice Assistance Division - Program Services, 209 West 14th Street, Suite 400, Austin, Texas 78701.

The amendment and new section are proposed under the Government Code, §509.003 (a)(5), to provide standards for the operation of programs and facilities administered or funded by TDCJ-CJAD.

There is no cross reference to statute.

§163.39. *Residential Services.*

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

(c) Building and Safety Codes.

(1) (No change.)

(2) Fire, Safety, and Health and Sanitation Codes. The CSCD directors or designees shall ensure that the facility complies with the applicable governmental regulations of the fire, safety, and health and sanitation authorities. Facility personnel shall plan and execute all reasonable procedures for the prevention and prompt control of fire so as to ensure the safety of staff, offenders, and visitors. Documentation of fire, safety, and health and sanitation inspections shall be provided to TDCJ-CJAD upon request. In the event that no applicable local, city, or county codes exist, state codes shall prevail. The facility shall also maintain compliance with minimum guidelines established by the TDCJ-CJAD for physical plants of CCFs. Fire prevention regulations and practices to ensure the safety of staff, offenders, and visitors shall include, but are not limited to:

(A) provision of an adequate fire protection service;

(B) a system of fire inspections and testing of equipment at least quarterly;

(C) an annual inspection by local or state fire officials or other qualified person(s); and

(D) available fire protection equipment at appropriate locations throughout the facility.

(d) (No change.)

(e) Program and Service Areas.

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

(3) Sanitation. There shall be written policy and procedures to ensure the following.

(A) Space shall be provided for janitor closets which are equipped with cleaning implements.

(B) There shall be storage areas in the facility for clothing, bedding, and cleaning supplies.

(C) There shall be clean, usable bedding, linen, and towels for new residents with provision for exchange or laundering on at least a weekly basis.

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles.

(E) There shall be adequate control of vermin and pests.

(F) There shall be timely trash and garbage removal.

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of all residents, staff and visitors.

(f) (No change.)

(g) Safety and Emergency Procedures. A comprehensive written plan shall be formulated and implemented to ensure that offenders, as well as employees, shall remain protected in the event of emergencies, including mental/emotional aberrations, physical acting out, medical situations, riots, escapes, fires, and both natural and civil disasters.

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

(h)-(m) (No change.)

(n) Food Service. The food preparation and dining area must provide space for meal service based on population size and need.

(1)-(5) (No change.)

(o)-(s) (No change.)

§163.40. Substance Abuse Treatment Standards.

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

(1) Admission - The administrative process and procedure performed to accept an offender into a treatment program or facility.

(2) Chemical Dependency Counselor - A qualified credentialed counselor or counselor intern working under direct supervision.

(3) Continuum of Care - A system which provides for the uninterrupted provision of essential services to offenders entering, exiting, and within the system.

(4) Counseling - Face-to-face interactions between offenders and counselors to help offenders identify, understand, and resolve their personal issues and problems related to their substance abuse or chemical dependency. Counseling may take place in groups or in individual meetings.

(5) Counselor Intern - A person pursuing a course of training in chemical dependency counseling that leads to licensure by the Texas Commission on Alcohol and Drug Abuse.

(6) Detoxification - Chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in an offender's body, manage withdrawal symptoms, and encourage the offender to continue ongoing treatment for chemical dependency.

(7) Direct Care Staff - The staff responsible for providing treatment, care, supervision, or other offender services that involve a significant amount of direct contact. (Clerical support staff are not considered direct care staff.)

(8) Discharge - The time when an offender leaves a program or facility and will no longer be receiving chemical dependency treatment from that program or facility.

(9) Discharge Summary - A recapitulation of the offender's progress and participation while in either primary, residential, or outpatient treatment.

(10) Education - Educational instruction; a planned, structured presentation of information which is related to substance abuse or chemical dependency.

(11) Emergency - A situation requiring immediate attention and action to treat or prevent physical, emotional, or mental threat, harm, injury, or illness.

(12) Facility/Program - The physical location or the treatment program offered at the location operated by, for, or with funding from the TDCJ-CJAD. Some locations may be locked facilities for in-patient treatment; other programs may be offered at locations as out-patient treatment.

(13) Grievance - A formal complaint limited to matters affecting the complaining offender personally and limited to matters for which the facility/program has the authority to remedy through the grievance process.

(14) Primary Counselor - An individual working directly with and being responsible for the treatment of the offender.

(15) Qualified Credentialed Counselor (QCC) - A licensed chemical dependency counselor (LCDC) or one of the following professionals:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician (MD);

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with specialty in psyche-mental health (APN-P/MH).

(16) Senior Counselor/Unit Manager/Unit Supervisor - A supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members.

(17) Special Needs Populations - Offenders who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs.

(18) Treatment - Planned, structured interactions between offenders and counselors, or among offenders in a therapeutic setting with a counselor as a facilitator, in which the goal is to help offenders identify, understand, and resolve their personal issues and problems related to their substance abuse or chemical dependency. See also subsection (a) of this section relating to counseling.

(19) Use of Force - Graduated levels of use of physical strength or weapons necessary to gain physical compliance and control of an offender whose actions otherwise pose a danger to self or others.

(b) Compliance. Compliance with TDCJ-CJAD substance abuse treatment standards is required of all programs that provide substance abuse treatment and are funded or managed by TDCJ-CJAD. Programs providing only substance abuse education are not subject to these standards.

(c) Personnel and Staff Development/Accreditation. The employer shall ensure that employees acquire any credentials, licensing, certifications, or continuing education required to perform their duties. Personnel files for employees shall be maintained to display copies of required documents. Programs that are not clinical training institutions as defined by the Texas Commission on Alcohol and Drug Abuse must inform all counselor interns in their employment of this fact.

(d) Admissions. There shall be documentation of specific admission criteria and procedures. Offenders are eligible for substance abuse treatment programs:

(1) if the offender's needs are met by the treatment services provided by the program;

(2) if a court orders the offender into the program and the subsequent assessment indicates the need for treatment services; or

(3) if the program allows readmissions and the offender meets the admission criteria. For offenders who are placed in treatment programs who do not meet admission criteria, a mechanism or procedure shall be developed for offender removal. A review and justification explaining the reason(s) the offender does not meet admission criteria shall be required.

(e) Intake. There shall be written policies and procedures establishing an intake process for offenders entering a substance abuse treatment program.

(f) Assessment Procedures. Acceptable and recognized assessment tools (tests and measurements) shall be used in all substance abuse treatment programs. Assessment policies and procedures shall require the use of approved clinical measurements and screening tests. Assessment procedures shall include the following listed in paragraphs (1)-(5) of this subsection:

(1) identification of strengths, abilities, needs and preferences of the offenders served;

(2) indication of desired outcomes and expectations of offenders served;

(3) summarization and evaluation of each offender to develop individual treatment plans.

(4) specified time-frames for initial and on-going assessments;

(5) assessments completed by a Qualified Credentialed Counselor (QCC), or if the assessor is not a QCC, then the documentation must be reviewed and signed by a QCC or qualified evaluator.

(g) Assessments. The assessment shall include:

(1) a summary of the offender's alcohol or drug abuse history including substances used, date of last use, date of first use, patterns and consequences of use, types of and responses to previous treatment and periods of sobriety;

(2) family information, including substance use and abuse by family members and supportive or dysfunctional relationships;

(3) vocational and employment status, including skills or trades learned, work record and current vocational plans;

(4) health information, including medical conditions that present a problem or that might interfere with treatment;

(5) emotional or behavioral problems, including a history of psychiatric treatment; and

(6) a diagnostic summary signed and dated by the chemical dependency counselor, followed by a Licensed Chemical Dependency Counselor (LCDC) or Qualified Credentialed Counselor (QCC).

(h) Orientation. Each program shall establish written policies and procedures for the orientation process. Orientation shall be provided at the onset of treatment and in accordance with the level of treatment to be provided. The orientation shall relay information necessary for offenders to be successful in treatment.

(i) Offender Rights. The offender's basic rights shall be respected and protected, free from abuse, neglect and exploitation. Each provider shall have written policy and procedure to ensure protection of the offender's rights according to federal and state guidelines.

(j) Release Of Information. There shall be written policies and procedures for protecting and releasing offender information that conforms to federal and state confidentiality laws. The staff shall follow written policies and procedures for responding to oral and written requests for offender-identifying information.

(k) Offender Records. There shall be written policies and procedures regarding the content of offender records. Case records

shall include, at a minimum, the following information listed in paragraphs (1)-(10) of this subsection:

(1) initial intake information form;

(2) referral documentation;

(3) case information from referral source, if applicable;

(4) release of information forms;

(5) relevant medical information;

(6) case history and assessment;

(7) individual treatment plan;

(8) evaluation and progress reports;

(9) discharge summary; and

(10) court order placement of offender into the program, if applicable.

(l) Offender Records Review Policy. There shall be written policy and procedures to govern the access of offenders to their own substance abuse treatment records in accordance with Texas Health and Safety Code, <\*>611.0045. This access does not apply to criminal justice records. Restrictions to access to treatment records shall be specified and explained to offenders upon request. Exceptions must involve the potential for harm to the offender or others.

(m) Treatment Planning and Review. Individual Treatment Plans will be developed in accordance with TDCJ-CJAD Standard §163.35(c)(5) of this title (relating to Supervision) on the Case Supervision or Treatment Plan, or through a similar process approved by the CSCD. Substance abuse treatment shall remain focused on the offender's success or lack of progress, and shall be reviewed at timely intervals at a minimum of once each month or when major changes occur (e.g., change in phase) and shall ensure:

(1) that the primary counselor meets with the offender as needed to review the treatment plan, evaluating goal progress and revisions; and

(2) that all revised treatment plans be signed and dated by the counselor and the offender.

(n) Treatment Progress Notes. There shall be written policies and procedures to require all programs to record and maintain progress notes on all offender case records, to document counseling sessions, and to summarize significant events that occur throughout the treatment process. Progress notes shall be documented at a minimum of once per week.

(o) Changes In Treatment Levels. Each treatment program shall develop written criteria for an offender to advance or regress from a level of treatment. An offender must meet the criteria for a change in the level of treatment before such a change or a discharge is implemented.

(p) Discharges From Treatment. Discharge from a program shall be based on the following criteria listed in paragraphs (1)-(7) of this subsection:

(1) the offender has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(2) the offender has satisfied a sentence of confinement;

(3) the offender has satisfied a period of placement as a condition of community supervision;



(4) the offender has demonstrated non-compliance with the program criteria or court order;

(5) the offender manifests a medical problem that prohibits participation or completion of the program requirements;

(6) the offender displays symptoms of a psychological disorder that prohibits participation or completion of the program requirements; or

(7) the offender is identified as inappropriate or ineligible for participation in the program as defined by facility eligibility criteria, statute, or standard.

(q) Discharge Summary. A discharge summary shall be prepared by the primary counselor for each offender leaving any substance abuse program. The discharge summary shall provide a summation of:

(1) clinical problems at the onset of treatment and original diagnosis;

(2) the problems or needs, strengths or weaknesses identified on the master treatment plan;

(3) the goals and objectives established;

(4) the course of treatment;

(5) the outcomes achieved; and

(6) a continuum of care plan/aftercare treatment plan.

(r) General Program Services Provisions. Specific services shall be required of all substance abuse treatment programs. Written policy and procedures shall ensure the following:

(1) All substance abuse services shall be delivered according to a written treatment plan.

(2) All programs shall employ a Qualified Credentialed Counselor as the Program Director, Clinical Director, Senior Counselor, or the counselor in a similar supervisory position.

(3) The program shall include culturally diverse curriculum applicable to the population served. This shall be accomplished through demonstrated, appropriate counseling and instructional materials.

(4) Members of the offender treatment team shall demonstrate effective communications and coordination, as evidenced in staffing, treatment planning and case-management documentation.

(5) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:

(A) conformity with state regulations;

(B) documentation of the administration of medications, medication errors, and drug reactions.

(6) Chemical dependency education shall follow a course outline that identifies lecture topics and major points to be discussed.

(7) The program shall provide education about the health risks of tobacco products and nicotine addiction.

(8) The program shall provide HIV education based on the Model Workplace Guidelines for Direct Service Providers developed by the Texas Department of Health.

(9) Offenders shall have access to HIV counseling and testing services directly or through referral.

(A) HIV services shall be voluntary, anonymous, and not limited by ability to pay.

(B) Counseling shall be based on the model protocol developed by the Texas Department of Health.

(C) In all TDCJ-CJAD funded facilities, testing, as well as pre- and post-test counseling, is to be provided by the medical department or contracted medical provider. In all facilities, service shall be provided either directly or through referral.

(10) The program shall make testing, as well as information, for tuberculosis and sexually transmitted diseases available to all offenders, unless the program has access to test results obtained during the past year.

(A) Services may be made available directly or through referral.

(B) If an offender tests positive for tuberculosis or a sexually transmitted disease, the program shall refer the offender to an appropriate health care provider and take appropriate steps to protect offenders and staff.

(C) A community corrections facility shall report to the local health department the release of an offender who is receiving treatment for tuberculosis.

(11) The program shall:

(A) refer pregnant offenders who are not receiving prenatal care to an appropriate health care provider and monitor follow-through; and

(B) refer offenders to ancillary services necessary to meet treatment goals.

(s) Detoxification. Written policies and procedures shall ensure the following listed in paragraphs (1)-(10) of this subsection.

(1) All offenders admitted to Detoxification programs shall need detoxification.

(2) Every offender shall have a completed medical history and physical.

(A) Residential offenders shall have a completed physical and medical history and a physical within 24 hours of admission. If the facility cannot meet this deadline because of exceptional circumstances, the circumstances shall be documented in the offender record. Until an offender's medical history and physical is complete, staff shall observe offenders closely (no less than every 15 minutes) and monitor vital signs (no less than once each hour).

(B) Outpatient offenders shall have the medical history and physical completed before admission.

(3) The program shall provide continuous supervision for offenders.

(A) In residential programs, direct care staff shall be awake and on site 24 hours a day.

(i) During day and evening hours, at least two awake staff shall be on duty for the first 12 offenders, with one more person on duty for each additional one to 16 offenders.

(ii) At night, at least one awake staff member shall be on duty for the first 12 offenders, with one more person on duty for each additional one to 16 offenders.

(B) In outpatient programs, direct care staff shall be awake and on site whenever an offender is on site. Offenders shall have access to on-call staff 24 hours a day.

(4) If the program accepts offenders with acute detoxification symptoms or a history of acute detoxification symptoms, the program shall have:

(A) a licensed vocational nurse or registered nurse on duty during all hours of operation;

(B) a physician on-call 24 hours a day.

(5) Level of observation shall be based on medical recommendations and program design, or not less than that described in paragraph (2)(A) of this subsection.

(6) A physician shall approve all medical policies, procedures, guidelines, tools, and forms, which shall include:

(A) screening instruments (including a medical risk assessment) and procedures;

(B) treatment protocol or standing orders for each chemical the program is prepared to address in detoxification; and

(C) emergency procedures.

(7) The clinical supervisor shall be a physician, physician assistant, advanced practice nurse, or registered nurse.

(8) The program shall:

(A) ensure continuous access to emergency medical care;

(B) provide offenders access to mental health evaluation and linkage with mental health services when indicated;

(C) use written procedures to encourage offenders to seek appropriate treatment after detoxification.

(9) Direct care staff shall complete detoxification training provided by a physician, physician assistant, advanced practice nurse, or registered nurse that includes instruction in the following areas listed in subparagraphs (A)-(E) of this paragraph:

(A) signs of withdrawal;

(B) pregnancy-related complications (if the program admits females of child-bearing age);

(C) observation and monitoring procedures;

(D) appropriate intervention; and

(E) complications requiring transfer.

(10) Staff shall assist each offender in developing an individualized post-detoxification plan that includes appropriate referrals.

(t) Relapse/Intensive Residential Treatment. Written policies and procedures shall ensure the following listed in paragraphs (1)-(11) of this subsection.

(1) All offenders admitted to relapse intensive residential treatment shall be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed ten offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders,

according to the design of the facility and with the approval of the funding sources.

(4) Counselors shall complete a comprehensive offender assessment within three working days of admission.

(5) An individualized treatment plan shall be completed for all offenders within five working days of admission.

(6) The facility shall deliver not less than 20 hours of structured activities per week for each offender, including:

(A) ten hours of chemical dependency counseling, with no less than one hour of individual counseling;

(B) seven hours additional education, counseling, life skills, or rehabilitation activities; and

(C) three hours of structured social or recreational activities.

(7) Counseling and education schedules shall be submitted to the funding entity for approval.

(8) Each offender shall have an opportunity to participate in physical recreation at least weekly.

(9) Program staff shall offer chemical dependency education or services to identified significant others.

(10) The program shall provide each offender with opportunities to apply knowledge and practice skills in a structured, supportive environment.

(11) If the program utilizes a Modified Therapeutic Community modality of treatment it shall include the following listed in subparagraphs (A)-(E) of this paragraph as minimal components:

(A) a Structure Board;

(B) encounter, counseling and family groups;

(C) utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2, to Phase 3, by meeting objectives and program goals);

(D) graduated treatment sanctions for incidents of non-compliance in coordination with the Transitional Treatment Team; and

(E) other peer-support groups.

(u) Primary Care/Modified Therapeutic Community Treatment. Written policies and procedures shall ensure the following listed in paragraphs (1)-(12) of this subsection.

(1) All offenders admitted to modified therapeutic community treatment shall be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed 20 offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders, according to the design of the facility and with the approval of the funding.

(4) Counselors shall complete a comprehensive offender assessment within five working days of admission for all offenders admitted to a therapeutic community program.

(5) An individualized treatment plan shall be completed for all offenders within seven working days of admission.

(6) Length of stay shall be offender-driven based upon:

(A) the offender's successful completion of treatment goals;

(B) medical and psychological appropriateness for the program;

(C) the offender's compliance with the programs rules and regulations.

(7) The facility shall deliver no less than twenty hours of structured activities (including therapeutic interventions) per week for each offender, including:

(A) ten hours of chemical dependency counseling, with no less than one hour of individual counseling;

(B) seven hours additional education, counseling, life skills, or rehabilitation activities; and

(C) three hours of structured social or recreational activities.

(8) Counseling and education schedules shall be submitted to the funding entity for approval.

(9) Each offender shall have an opportunity to participate in physical recreation at least four hours per week.

(10) Program staff shall offer chemical dependency education or services to identified significant others.

(11) The program shall provide each offender with opportunities to apply knowledge and proactive skills in a structured, supportive environment.

(12) All Therapeutic Communities shall have the following listed in subparagraphs (A)-(E) of this paragraph as minimal components:

(A) a Structure Board;

(B) encounter, counseling, and family groups;

(C) Utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2, to Phase 3, by meeting objectives and program goals);

(D) graduated treatment sanctions for incidents of non-compliance in coordination with the Transitional Treatment Team; and

(E) other peer-support groups.

(v) Community Residential Treatment. Written policies and procedures shall ensure the following listed in paragraphs (1)-(8) of this subsection.

(1) All offenders admitted to intensive residential treatment shall be medically stable, able to function with limited supervision and support, and be able to participate in work release or community service/restitution programs.

(2) The program shall have adequate staff to meet treatment needs within the context of the program description, with counselor caseloads not to exceed 16 offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders,

according to the design of the facility and with the approval of the funding.

(4) Counselors shall complete a comprehensive offender assessment and treatment plan within five working days of admission for all offenders.

(5) The facility shall deliver no less than ten hours of structured activities per week for each offender, including at least five hours of chemical dependency counseling.

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(8) If the program utilizes a Modified Therapeutic Community modality of treatment, it shall include the following components listed in subparagraphs (A)-(G) of this paragraph:

(A) a Structure Board;

(B) encounter, counseling and family groups;

(C) utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2, to Phase 3, by meeting objectives and program goals);

(D) graduated treatment sanctions for incidents of non-compliance in coordination with the Transitional Treatment Team;

(E) other peer-support groups;

(F) counselor caseloads not to exceed 20 offenders per counselor; and

(G) programming of no less than four hours of chemical dependency counseling and four hours of structured activities per week.

(w) Outpatient Treatment. Written policies and procedures shall ensure the following listed in paragraphs (1)-(11) of this subsection:

(1) All offenders admitted to outpatient programs shall be medically stable, and have appropriate support systems in the community to live independently with minimal structure.

(2) The program shall have adequate staff to provide offenders support and guidance to ensure effective service delivery, safety, and security. Staffing patterns shall be submitted to the funding entity.

(3) The program shall set limits on counselor caseload size to ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented and approved by the funding entity.

(4) Didactic groups shall not exceed 30 offenders in a group.

(5) Therapeutic groups shall not exceed 16 offenders in a group.

(6) For offenders in supportive outpatient programs, counselors shall complete a comprehensive offender assessment within 30 calendar days of admission for all offenders.

(7) For offenders in intensive outpatient programs, counselors shall complete a comprehensive offender assessment within ten calendar days of admission for all offenders.

(8) Intensive outpatient programs shall deliver no less than ten hours of structured activities per week for each offender, including at least five hours of chemical dependency counseling.

(9) Supportive outpatient programs shall deliver no less than two hours of structured activities per week for each offender, including at least one hour of chemical dependency counseling.

(10) Counseling and education schedules shall be submitted to the funding entity for approval.

(11) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(x) Special Populations. Written policies and procedures shall ensure the following listed in paragraphs (1)-(11) of this subsection:

(1) Programs that address the special mental health, intellectual capacity, or medical needs of offenders must provide appropriate treatment either by program staff or through contracted services.

(2) Admission to a special needs program must be based on a documented mental health, intellectual capacity, or medical need.

(3) When the assessment process indicates that the offender has coexisting disabilities/disorders, the Treatment Plan shall specifically address those issues that might impact treatment, recovery, relapse, and or recidivism.

(4) Personnel shall be available who are qualified in the treatment of coexisting disabilities/disorders.

(5) Within 96 hours of admission to a special needs residential program, offenders shall be administered a medical and psychological evaluation.

(6) Within ten days of admission to a residential program for special needs offenders, the program administrator or designee shall contact the Texas Council on Offenders with Mental Impairments (TCOMI) regarding the offender's status and plans for a continuum of care after discharge, regardless of whether or not the discharge is for successful completion of the program.

(7) Residential facilities providing services for special needs populations shall have procedures to provide access to health care services, including medical, dental, and mental health services, under the control of a designated health authority. When this authority is other than a physician, final medical judgments must rest with a single designated responsible physician licensed by the state.

(A) Services/treatment shall be directed toward maximizing the functioning and reducing the symptoms of offenders.

(B) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:

(i) conformity with state regulations;

(ii) documentation of the rationale for use and goals of service/treatment consistent with the individual plan of treatment;

(iii) documentation of the administration of medications, medication errors, and drug reactions;

(iv) procedures to follow in case of emergencies.

(8) There shall be procedures for documenting the offender has been informed of medication management procedures.

(9) Offenders shall be actively involved in decisions related to their medications.

(10) Programs for special needs offenders must follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than 16 offenders for each counselor.

(11) Programs operating in residential facilities shall ensure that offenders will have no less than ten days of appropriate medication for use after discharge.

(y) Residential Physical Plant Requirements. Facilities (Physical Plants) providing substance abuse treatment to offenders shall have written policies and procedures to ensure the following listed in paragraphs (1)-(21) of this subsection:

(1) The physical plant shall be located either within a mile of public transportation or other means of available transportation.

(2) There must be documentation indicating that ventilation conforms with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 62 and ASHRAE Standard 55 requiring 20 CFM per person minimum outside air and ventilation for each occupant or facility sleeping quarters. The facility/sleeping quarters must also meet Smoke Management Standards 92A, 92B and 204M established by the National Fire Prevention Association (NFPA). Consultation with trade associations specializing in the area of ventilation can provide alternative methods of mechanical ventilation if windows are absent or not operable. Documentation for meeting proper ventilation requirements can be obtained through a local public health agency, an engineering consultant, or a trade association such as the American Society of Heating, Refrigeration and Air-Conditioning Engineer, Inc.

(3) There must be documentation that all sleeping quarters have lighting of at least 20 foot-candles in reading and grooming areas. Sleeping quarters shall be safe and provide the resident with adequate lighting which is conducive to reading and grooming.

(4) An adequate amount of floor space must be provided per resident in the facility(s) sleeping area to meet the safety and security requirements of the facility.

(5) In the sleeping area, each resident must be provided at a minimum: a bed, mattress and pillow; supply of bed linen; and closet/locker space for the storage of personal items.

(6) Private counseling space with adequate furniture must be provided in the facility.

(7) Space and furnishings for activities such as group meetings and visits shall be provided in the facility.

(8) At a minimum, the facility shall have one operable toilet for every eight residents or increment thereof as approved by funding entity. Urinals may be substituted for up to one-half of the toilets in male-populated facilities.

(9) At a minimum, the facility shall have one operable wash basin with temperature controlled hot and cold running water for every eight residents, or as approved by the funding agency.

(10) At a minimum, the facility shall have one operable shower or bathing facility with temperature controlled hot and cold running water for every twelve residents or as approved by funding entity. The water shall be thermostatically controlled to temperatures ranging from 100 to 108 degrees Fahrenheit to ensure the safety of residents.

(11) The facility shall have the ability to handle the laundry needs on a daily basis for all residents.

(12) Facilities of more than 200 residents shall be subdivided into units of not more than 60 residents, each of which are staffed with the number and variety of personnel required to provide the program services and custodial supervision needed based on contractual requirements. Units with 50 or fewer residents shall be permitted to conduct manageable, scaled programs based on decisions by facility management and contractual requirements.

(13) Resident population shall not exceed the rated space of the facility. The original facility plan shall be examined to determine its rated bed capacity. If remodeled since original construction, the latest blueprints or plans for each resident housing shall be used.

(14) When males and females are housed in the same facility, there shall be separate sleeping quarters with adequate supervision.

(15) There shall be identifiable exits in each housing area and other high density areas to permit the prompt evacuation of residents and staff under emergency conditions as approved by the local or state fire inspector/Marshall having jurisdiction.

(16) Where applicable, there shall be a separate day room (leisure time space) for each housing unit, and an outside recreation area shall be provided.

(17) There shall be a visiting room or area for contact visitation which is adequate to meet the needs and size of the facility.

(18) Space must be provided for administrative, custodial, professional, and clerical staff.

(19) Preventative maintenance of the physical plant which provides for emergency repairs or replacements in life threatening situations shall be documented and conducted on a timely and routine basis.

(20) There shall be documentation by a qualified source that the interior finishing material in resident living areas, exit areas, and places of public assembly are in accordance with the local or state fire inspector/marshall having jurisdiction.

(21) Exits in the facility must be in compliance with either state or local fire safety authorities.

(z) Special Physical Plant Provisions. There shall be written policy and procedures to ensure access for handicapped residents in a manner which provides for their safety and security. In accordance with the Americans with Disabilities Act (ADA), areas of the facility which are accessible to the public shall be also accessible to handicapped staff and visitors.

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

Filed with the Office of the Secretary of State on July 20, 1998.

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Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 30, 1998

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



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 11. Food Distribution and Processing

The Texas Department of Human Services (DHS) proposes amendments to §§11.105 and 11.6009, concerning contractor sanctions, termination, and appeal rights, and reimbursement, in its Food Distribution and Processing chapter. The United States Department of Agriculture has mandated the reduction in the time frames for submitting an audit in accordance with the requirements of the Single Audit Act, as amended, from 13 months to nine months from the end of the contractor's fiscal year. The revised time frame is effective for contractor fiscal years beginning on or after July 1, 1998. The purpose of the proposed amendments is to reduce the number of advance notifications to contractors reminding them of audits due from three advance notices to two. The amendments are necessary to accommodate the mandated reduction in the time frame for submitting an audit as contained in the Single Audit Act, as amended.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local 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 enhanced program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act, as amended. There will be no effect on small businesses because the change is a technical amendment to a current procedure. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Nancy Hill at (512) 467-5852 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-274, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Subchapter A. Food Distribution Program

##### 40 TAC §11.105

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

*§11.105. Contractor Sanctions, Termination, and Appeal Rights.*

~~{(a) The information in this subsection applies to recipient agencies participating in the Special Nutrition Programs whose required single audit falls due before June 1, 1996.}~~

~~{(1) An applicant or recipient agency whose contract has been terminated has the right to appeal the termination as specified in Chapter 79 of this title (relating to Legal Services).}~~

~~{(2) The Texas Department of Human Services (DHS) imposes fiscal sanctions on recipient agencies for failure to comply with the requirements of the Single Audit Act.}~~

~~{(A) DHS takes fiscal sanctions against a recipient agency according to the procedures specified in subparagraphs (A)-(C) of this paragraph.}~~

~~{(i) DHS notifies each recipient agency upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS; and that failure to comply will result in sanctions up to and including contract termination and recovery of overpayments as identified through audit findings.}~~

~~{(ii) DHS notifies recipient agencies by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable; that failure to submit an acceptable audit within 60 days of receipt of the notification will result in termination.}~~

~~{(iii) If an acceptable audit is not received within the 60 days specified in clause (ii) of this subparagraph, DHS notifies the recipient agency by certified mail that the audit has not yet been received and that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next allocation period.}~~

~~{(iv) If an acceptable audit is not received within the 30 days specified in clause (iii) of this subparagraph, DHS notifies the recipient agency that their contract is terminated effective upon receipt of this notification.}~~

~~{(B) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the recipient agency.}~~

~~{(C) If DHS imposes sanctions according to the procedures specified in paragraph (2) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a recipient agency submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in subparagraph (A) of this paragraph. DHS may extend the time within which a recipient agency must submit an audit if DHS determines such an extension is justified.}~~

~~{(b) The information in this section [subsection] applies to recipient agencies participating in the Special Nutrition Programs who are [whose] required to obtain an audit in accordance with the Single Audit Act, as amended [single audit falls due on June 30, 1996, or later].}~~

(1) An applicant or recipient agency whose contract has been terminated has the right to appeal the termination as specified in Chapter 79 of this title (relating to Legal Services).

(2) The Texas Department of Human Services (DHS) ~~[DHS]~~ imposes fiscal sanctions on recipient agencies for failure to comply with the requirements of the Single Audit Act , as amended.

(A) DHS takes fiscal sanctions against a recipient agency according to the procedures specified in subparagraphs (A)-(D) of this paragraph.

(i) DHS notifies each recipient agency upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.

(ii) DHS provides the recipient agency two ~~[three]~~ advance notices reminding the recipient agency of the specific ~~specific~~ date that the audit is due.

(I) DHS issues the first notice by regular mail six months after the end of the recipient agency's fiscal year for which the audit is due.

~~{(II) DHS issues the second notice by regular mail nine months after the end of the recipient agency's fiscal year for which the audit is due.}~~

~~{(II) [(III)] DHS issues the second [third] notice by certified and regular mail eight [11] months after the end of the recipient agency's fiscal year for which the audit is due. DHS notifies the recipient agency that:~~

~~(-a-) DHS must receive the audit on or before the due date specified in the notice;~~

~~(-b-) if DHS does not receive the audit on or before the specified due date, DHS will terminate the recipient agency's contract effective the first day of the month following the month in which the audit was due; and~~

~~(-c-) the recipient agency has the right to appeal this decision.~~

~~(iii) If DHS does not receive the audit on or before the specified due date, DHS notifies the recipient agency by certified and regular mail that their contract was terminated effective the first day of the month following the month in which the audit was due.~~

(B) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the recipient agency.

(C) If a recipient agency submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the recipient agency in writing that the audit is unacceptable, how it is unacceptable, and that the recipient agency has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the recipient agency by certified and regular mail that:

(i) the recipient agency failed to provide an acceptable audit within the specified time frames;

(ii) DHS must receive an acceptable audit by the due date specified in this notification;

(iii) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(iv) the recipient agency has the right to appeal this decision. DHS may extend the time within which a recipient agency must submit an audit if DHS determines such an extension is justified.

(D) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the recipient agency by certified and regular mail that:

(i) the recipient agency failed to provide an acceptable audit by the specified due date; and,

(ii) DHS terminated their contract effective the first day of the month following the specified due date.

(E) Once a recipient agency has been terminated for failure to submit an acceptable audit, the recipient agency must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 438-3765



## Subchapter B. The Texas Commodity Assistance Program (TEXCAP)

### 40 TAC §11.6009

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

§11.6009. *Reimbursement.*

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

~~[(g) Fiscal sanctions on contractor's whose single audit is due before June 1, 1996. DHS imposes fiscal sanctions specified in this subsection on contractors whose required single audit falls due before June 1, 1996, for failure to comply with the requirements of the Single Audit Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).]~~

~~[(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.]~~

~~[(A) DHS notifies each contractor upon approval of their application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.]~~

~~[(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.]~~

~~[(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.]~~

~~[(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit~~

~~within 30 days of receipt of this notification will result in termination in the next claim month.]~~

~~[(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.]~~

~~[(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.]~~

~~[(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.]~~

~~[(g) [(h)] Fiscal sanctions [on contractors whose single audit is due June 30, 1996, or later]. DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail [whose required single audit falls due on June 30, 1996, or later for failure] to comply with the requirements of said Act [the Single Audit Act]. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).]~~

~~(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in this paragraph and paragraphs (2)-(4) of this subsection.~~

~~(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.~~

~~(B) DHS provides the contractor two [three] advance notices reminding the contractor of the specific date that the audit is due.~~

~~(i) DHS issues the first notice by regular mail six months after the end of the contractor's fiscal year for which the audit is due.~~

~~[(ii) DHS issues the second notice by regular mail nine months after the end of the contractor's fiscal year for which the audit is due.]~~

~~(ii) [(iii)] DHS issues the second [third] notice by certified and regular mail eight [11] months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:~~

~~(I) DHS must receive the audit on or before the due date specified in the notice;~~

~~(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's contract effective the first day of the month following the month in which the audit was due; and~~

~~(III) the contractor has the right to appeal this decision.~~

~~(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and~~

regular mail that their contract was terminated effective the first day of the month following the month in which the audit was due.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(D) the contractor has the right to appeal this decision. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit by the specified due date; and

(B) DHS terminated their contract effective the first day of the month following the specified due date.

(5) Once a contractor has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 438-3765



## Chapter 12. Special Nutrition Programs

The Texas Department of Human Services (DHS) proposes amendments to §§12.24, 12.121, 12.209, 12.309, and 12.409, concerning sanctions and penalties and fiscal action, in its Special Nutrition Programs chapter. The United States Department of Agriculture has mandated the reduction in the time frames for submitting an audit in accordance with the requirements of the

Single Audit Act, as amended, from 13 months to nine months from the end of the contractor's fiscal year. The revised time frame is effective for contractor fiscal years beginning on or after July 1, 1998. The purpose of the proposed amendments is to reduce the number of advance notifications to contractors reminding them of audits due from three advance notices to two. The amendments are necessary to accommodate the mandated reduction in the time frame for submitting an audit as contained in the Single Audit Act, as amended.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local 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 enhanced program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act, as amended. There will be no effect on small businesses because the change is a technical amendment to a current procedure. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Nancy Hill at (512) 467-5852 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-274, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

### Subchapter A. Child and Adult Care Food Program

#### 40 TAC §12.24

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

#### §12.24. Sanctions and Penalties.

(a)-(j) (No change.)

~~{(k) DHS imposes fiscal sanctions specified in this subsection on contractors whose required single audit falls due before June 1, 1996, for failure to comply with the requirements of the Single Audit Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).}~~

~~{(l) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.}~~

~~{(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.}~~

~~{(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.}~~



~~{(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.}~~

~~{(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.}~~

~~{(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.}~~

~~{(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.}~~

~~{(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.}~~

~~(k) [(4)] DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail [whose required single audit falls due on June 30, 1996, or later for failure] to comply with the requirements of said Act [the Single Audit Act]. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).~~

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two ~~[three]~~ advance notices reminding the contractor of the specific date that the audit is due.

(i) DHS issues the first notice by regular mail six months after the end of the contractor's fiscal year for which the audit is due.

~~{(ii) DHS issues the second notice by regular mail nine months after the end of the contractor's fiscal year for which the audit is due.}~~

(ii) ~~{(iii)}~~ DHS issues the second ~~[third]~~ notice by certified and regular mail eight ~~[11]~~ months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:

(I) DHS must receive the audit on or before the due date specified in the notice;

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's contract effective the first day of the month following the month in which the audit was due; and

(III) the contractor has the right to appeal this decision.

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their contract was terminated effective the first day of the month following the month in which the audit was due.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(D) the contractor has the right to appeal this decision. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit by the specified due date; and

(B) DHS terminated their contract effective the first day of the month following the specified due date.

(5) Once a contractor has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

(l) ~~[(m)]~~ If a sponsoring organization of day homes determines during a monitoring review, or by other means, that a provider has failed to comply with program requirements, the sponsor must execute a corrective action plan to achieve compliance. If a sponsoring organization conducts two or more unannounced monitoring reviews in any 12-month period during which the sponsor cannot confirm that children are enrolled for child care and participating in the program, the sponsor must execute a corrective action plan to ensure they are able to effectively monitor the provider's participation in the program. Exception: A sponsor may terminate the participation of a day care home provider without a corrective action plan if the safety of the children in care is at risk or if the sponsor determines that the

program noncompliance is the result of intentional program abuse, deficient program operation, or fraudulent activities. The corrective action plan must:

- (1) prescribe the actions to be taken by the sponsor and the provider to achieve compliance; and
- (2) include the date by which corrective action must be completed.

This 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 20, 1998.

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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



## Subchapter B. Summer Food Service Program

### 40 TAC §12.121

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

#### §12.121. Sanctions and Penalties.

- (a) (No change.)

~~[(b) DHS imposes fiscal sanctions specified in this subsection on sponsors whose required single audit falls due before June 1, 1996, for failure to comply with the requirements of the Single Audit Act. The sponsor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).]~~

~~[(1) DHS takes fiscal sanctions against a sponsor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.]~~

~~[(A) DHS notifies each sponsor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.]~~

~~[(B) DHS notifies the sponsor by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.]~~

~~[(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the sponsor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.]~~

~~[(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the sponsor by certified mail that failure to submit the required audit~~

~~within 30 days of receipt of this notification will result in termination in the next claim month.]~~

~~[(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the sponsor that the contract is terminated effective upon receipt of this notification.]~~

~~[(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the sponsor.]~~

~~[(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a sponsor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a sponsor must submit an audit if DHS determines such an extension is justified.]~~

~~(b) [(e)] DHS imposes fiscal sanctions specified in this subsection on sponsors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail [whose required single audit falls due on June 30, 1996, or later for failure] to comply with the requirements of the said Act [Single Audit Act]. The sponsor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).~~

(1) DHS takes fiscal sanctions against a sponsor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each sponsor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.

(B) DHS provides the sponsor two [three] advance notices reminding the sponsor of the specific date that the audit is due.

(i) DHS issues the first notice by regular mail six months after the end of the sponsor's fiscal year for which the audit is due.

~~[(ii) DHS issues the second notice by regular mail nine months after the end of the sponsor's fiscal year for which the audit is due.]~~

~~[(ii) [(iii)] DHS issues the second [third] notice by certified and regular mail eight [11] months after the end of the sponsor's fiscal year for which the audit is due. DHS notifies the sponsor that:~~

~~(I) DHS must receive the audit on or before the due date specified in the notice;~~

~~(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the sponsor's contract effective the first day of the month following the month in which the audit was due; and~~

~~(III) the sponsor has the right to appeal this decision.~~

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the sponsor by certified and regular

mail that their contract was terminated effective the first day of the month following the month in which the audit was due.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the sponsor.

(3) If a sponsor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the sponsor in writing that the audit is unacceptable, how it is unacceptable, and that the sponsor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the sponsor by certified and regular mail that:

(A) the sponsor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(D) the sponsor has the right to appeal this decision. DHS may extend the time within which a sponsor must submit an audit if DHS determines such an extension is justified.

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the sponsor by certified and regular mail that:

(A) the sponsor failed to provide an acceptable audit by the specified due date; and

(B) DHS terminated their contract effective the first day of the month following the specified due date.

(5) Once a sponsor has been terminated for failure to submit an acceptable audit, the sponsor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811385

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



## Subchapter C. Special Milk Program

### 40 TAC §12.209

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

§12.209. *Fiscal Action.*

(a) (No change.)

~~[(b) DHS imposes fiscal sanctions specified in this subsection on contractors whose required single audit falls due before June 1, 1996, for failure to comply with the requirements of the Single Audit Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).]~~

~~[(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.]~~

~~[(A) DHS notifies each contractor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.]~~

~~[(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable; that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.]~~

~~[(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.]~~

~~[(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.]~~

~~[(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.]~~

~~[(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.]~~

~~[(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be reinitiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.]~~

~~[(b) [(e)] DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail [whose required single audit falls due on June 30, 1996, or later for failure] to comply with the requirements of said Act [the Single Audit Act]. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).]~~

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor ~~two~~ three advance notices reminding the contractor of the specific date that the audit is due.

(i) DHS issues the first notice by regular mail six months after the end of the contractor's fiscal year for which the audit is due.

~~[(ii) DHS issues the second notice by regular mail nine months after the end of the contractor's fiscal year for which the audit is due.]~~

~~[(ii) [(iii)] DHS issues the second ~~[third]~~ notice by certified and regular mail eight ~~[11]~~ months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:~~

~~(I) DHS must receive the audit on or before the due date specified in the notice;~~

~~(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's contract effective the first day of the month following the month in which the audit was due; and~~

~~(III) the contractor has the right to appeal this decision.~~

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their contract was terminated effective the first day of the month following the month in which the audit was due.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(D) the contractor has the right to appeal this decision. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit by the specified due date; and

(B) DHS terminated their contract effective the first day of the month following the specified due date.

(5) Once a contractor has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811386

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

◆ ◆ ◆  
**Subchapter D. School Breakfast Program**

**40 TAC §12.309**

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

§12.309. *Fiscal Action.*

(a) (No change.)

~~[(b) DHS imposes fiscal sanctions specified in this subsection on contractors whose required single audit falls due before June 1, 1996, for failure to comply with the requirements of the Single Audit Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).]~~

~~[(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.]~~

~~[(A) DHS notifies each contractor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.]~~

~~[(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.]~~

~~[(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required~~

audit within 30 days of receipt of this notification will result in termination.]

~~[(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.]~~

~~[(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.]~~

~~[(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.]~~

~~[(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be reinstated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.]~~

~~(b) [(e)] DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail [whose required single audit falls due on June 30, 1996, or later for failure] to comply with the requirements of said Act [the Single Audit Act]. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).~~

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two ~~three~~ advance notices reminding the contractor of the specific date that the audit is due.

(i) DHS issues the first notice by regular mail six months after the end of the contractor's fiscal year for which the audit is due.

~~[(ii) DHS issues the second notice by regular mail nine months after the end of the contractor's fiscal year for which the audit is due.]~~

(ii) [(iii)] DHS issues the second ~~third~~ notice by certified and regular mail eight ~~11~~ months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:

(I) DHS must receive the audit on or before the due date specified in the notice;

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's contract effective the first day of the month following the month in which the audit was due; and

(III) the contractor has the right to appeal this decision.

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their contract was terminated effective the first day of the month following the month in which the audit was due.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(D) the contractor has the right to appeal this decision. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit by the specified due date; and

(B) DHS terminated their contract effective the first day of the month following the specified due date.

(5) Once a contractor has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811387

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

◆ ◆ ◆  
Subchapter E. National School Lunch Program  
40 TAC §12.409

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and 33.001-33.024 of the Human Resources Code.

§12.409. *Fiscal Action.*

(a) (No change.)

~~{(b) DHS imposes fiscal sanctions specified in this subsection on contractors whose required single audit falls due before June 1, 1996, for failure to comply with the requirements of the Single Audit Act. The contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).}~~

~~{(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.}~~

~~{(A) DHS notifies each contractor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.}~~

~~{(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.}~~

~~{(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.}~~

~~{(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.}~~

~~{(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.}~~

~~{(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.}~~

~~{(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.}~~

~~{(b) [(e)] DHS imposes fiscal sanctions specified in this subsection on contractors who are required to obtain an audit in accordance with the Single Audit Act, as amended, and who fail [whose required single audit falls due on June 30, 1996, or later for failure] to comply with the requirements of the Single Audit Act. The~~

contractor has the right to appeal this action as specified in Chapter 79 of this title (relating to Legal Services).

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in paragraphs (1)-(4) of this subsection.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in contract termination and recovery of overpayments as identified through audit findings.

(B) DHS provides the contractor two ~~[three]~~ advance notices reminding the contractor of the specific date that the audit is due.

(i) DHS issues the first notice by regular mail six months after the end of the contractor's fiscal year for which the audit is due.

~~{(ii) DHS issues the second notice by regular mail nine months after the end of the contractor's fiscal year for which the audit is due.}~~

~~{(iii) [(iii)] DHS issues the second ~~[third]~~ notice by certified and regular mail eight ~~[11]~~ months after the end of the contractor's fiscal year for which the audit is due. DHS notifies the contractor that:~~

~~{(I) DHS must receive the audit on or before the due date specified in the notice;~~

~~{(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's contract effective the first day of the month following the month in which the audit was due; and~~

~~{(III) the contractor has the right to appeal this decision.~~

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail that their contract was terminated effective the first day of the month following the month in which the audit was due.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If a contractor submits an audit which does not meet the requirements of the Single Audit Act, as amended, then DHS notifies the contractor in writing that the audit is unacceptable, how it is unacceptable, and that the contractor has 30 calendar days from the date on the notification to submit an acceptable audit to DHS. If DHS does not receive the required audit by the specified time frame and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS will terminate their contract effective the first day of the month following the due date specified in this notification; and

(D) the contractor has the right to appeal this decision. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

(4) If DHS does not receive the required audit by the specified due date and has not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit by the specified due date; and

(B) DHS terminated their contract effective the first day of the month following the specified due date.

(5) Once a contractor has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811388

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 813. Food Stamp Employment and Training

The Texas Workforce Commission (Commission) proposes the repeal of §§813.1 and 813.2 and new §§813.1, 813.2, 813.11-813.14, 813.21-813.23, 813.31-813.33, and 813.41-813.43 relating to the Food Stamp Employment and Training (E&T) Program.

The purpose of the repeal and new rules is to implement the federal statutes that affect the E&T Program and the recipients of Food Stamps.

Subchapter A sets out the General Provisions. Section 813.1 states the purpose and §813.2 sets out the definitions and terms used in this chapter.

Subchapter B sets out the provisions for Expenditure of Funds. Section 813.11 states who is to be served, §813.12 states what funds are designated for able-bodied adults without dependents (ABAWDs); §813.13 details the reimbursement basis; and §813.14 provides information regarding the other E&T Program funds.

Subchapter C sets out the Allowable Activities. Section 813.21 sets out the allowable activities for ABAWDs; §813.22 sets out the activities for all E&T mandatory work registrants; and §813.23 sets out the reimbursement rates.

Subchapter D sets out the Support Services for Participants. Section 813.31 is the general provision on support services, §813.32 discusses child care services; and §813.33 discusses the transportation assistance.

Subchapter E sets out Complaints and Appeals. Section 813.41 addresses appeals of decisions made on food stamp applications and benefits; §813.42 addresses appeals of E&T program decisions; and §813.43 addresses discrimination complaints.

The Food Stamp Act of 1977 requires able-bodied adults between the ages of 16-59, referred by the food stamp office, to register for work and take part in an E&T Program. Failure to comply with these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires ABAWDs to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

The Balanced Budget Act of 1997 mandates that the states utilize at least eighty percent (80%) of the 100% federal Food Stamp E&T funds for qualifying work activities for ABAWDs. The remaining twenty-percent (20%) may be used to provide work activities specified in the Texas State Plan, approved by the U.S. Department of Agriculture, for all mandatory work registrants. The remaining twenty percent (20%) funds are not subject to the restrictions placed upon the 80% of the federal funds.

The Balanced Budget Act also provides the U.S. Secretary of Agriculture with the authority to set reimbursement rates for the E&T Program components provided to ABAWDs to ensure that they reflect reasonable cost for providing those activities. The U.S. Food and Nutrition Service (FNS) has set two levels for the maximum rates paid for both workfare and training components. One level is for a filled position and the other level is for an unfilled position. The proposed rules contain these reimbursement rates. The proposed rules set out the method in which the 80% program services funds for ABAWDs will be provided to local workforce development boards. TWC plans to reimburse local boards for their allowable expenditures for education, training, and job search/workfare based on the maximum reimbursement rates specified in §813.23 of this title (relating to Reimbursement Rates), and up to the board's allocation amount of the designated ABAWD funds.

Randy Townsend, Chief Financial Officer, has determined that for the first five-year period the rules are in effect, the following statements will apply:

there are no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state and to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

there are no anticipated economic costs to persons required to comply with the rules.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that the proposed rules would not affect private employment but that it would impact public employment by creating new workforce program slots. Nevertheless, the Director of Labor Market Information does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Jean Mitchell, Director of Workforce Development and Assistance, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be serving the ABAWD population in compliance with federal law.

Comments on the proposal may be submitted to Gayla Gibler, Welfare Reform, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778; fax (512) 463-7379. Comments may also be submitted via e-mail to Ms. Gibler at [gayla.gibler@twc.state.tx.us](mailto:gayla.gibler@twc.state.tx.us). Comments must be received by the Commission within thirty (30) days from the date this proposal is published in the *Texas Register*. A public hearing will be held on August 11, 1998, at 2:30 p.m. in the Texas Workforce Commission Building; 101 East 15th Street, Room 644; Austin, Texas 78778.

#### 40 TAC §813.1, §813.2

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

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.1. *Expenditure of Funds.*

§813.2. *Allowable Activities.*

This 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 20, 1998.

TRD-9811374

J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812



### Subchapter A. General Provisions

#### 40 TAC §813.1, §813.2

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

§813.1. *Purpose.*

The Food Stamp Employment and Training (E&T) Program assists non-public assistance food stamp recipients in entering employment through participation in allowable job search, training, education, or workfare activities which promote self-sufficiency.

#### §813.2. *Definitions.*

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

(1) ABAWD - able-bodied adults, age 18 to 50, without dependents.

(2) Dependents - individuals under 18 years of age.

(3) E&T Program - the Food Stamp Employment and Training Program.

(4) Mandatory work registrant - a non-exempt food stamp household member, age 16 through 59, who is required to register for employment services.

(5) Non-Public Assistance Food Stamp Recipients - a classification by the Department of Human Services for a food stamp household in which all or some of its members do not receive Temporary Assistance for Needy Families (TANF) or Refugee Cash Assistance.

(6) Participant - a Food Stamp recipient participating in the E&T program.

(7) Workfare Program - placement with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an E&T Program participant's food stamp monthly allotment amount divided by the federal minimum wage.

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

Filed with the Office of the Secretary of State on July 20, 1998.

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J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



### Subchapter B. Expenditure of Funds

#### 40 TAC §813.11-813.14

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

§813.11. *Persons Served.*

E&T Program services are provided to mandatory work registrants.

§813.12. *Funds Designated for ABAWDs.*

(a) Eighty percent of the state's allocation of 100% of the federal E&T Program funds must be spent on allowable work, education, or training activities for ABAWDs as listed in §813.21 of this title (relating to Activities for ABAWDs).

(b) The provisions pertaining to specific funding for ABAWDs in this section applies to state and local program fund



allocations and administrative fund allocations as specified in §800.54 of this title (relating to the Food Stamp Employment and Training Program).

§813.13. Reimbursements.

Local Workforce Development Boards will be reimbursed with the designated ABAWD funds within their allocations for expenses incurred in providing allowable activities to eligible ABAWDs. Reimbursements will be paid by the Texas Workforce Commission.

§813.14. Other E&T Funds.

All other federal and state E&T Program funds may be spent on any E&T Program activity listed in §813.22 of this title (relating to Other Activities for All Mandatory Work Registrants) for any eligible mandatory work registrant.

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

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## Subchapter C. Allowable Activities for Participants

### 40 TAC §§813.21-813.23

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

§813.21. Activities for ABAWDs.

Allowable E&T Program activities for ABAWDs through funds designated in §813.12 of this title (relating to Funds Designated for ABAWDs) are limited to the following:

(1) twenty hours or more per week of participation in work programs under the Trade Adjustment Act of 1974;

(2) twenty hours or more per week of participation in programs under the Job Training Partnership Act (29 U.S.C. 1501, et.seq);

(3) twenty hours or more per week of participation in education and training; or

(4) participation in a state approved workfare program in the public or private non-profit sectors, which includes a 30-day job search phase prior to placement in an available workfare position.

§813.22. Other Activities for all E&T Program Mandatory Work Registrants.

The following activities may be provided for all E&T Program mandatory work registrants, including ABAWDs, as long as they are funded with the 20% of the 100% federal funds and the state matching funds:

(1) job search;

(2) job readiness;

(3) vocational training;

(4) non-vocational education;

(5) work experience; or

(6) other activities approved in the current Food Stamp Employment and Training State Plan located at the Texas Workforce Commission state office building.

§813.23. Reimbursement Rates.

Expenditures of E&T Program funds for work, education and training activities for ABAWDs are subject to federally established maximum reimbursement rates. The following rates apply to both workfare position slots and education or training slots:

(1) A filled slot is reimbursed \$175. A slot is considered "filled" when a participant reports to the workfare, education, or training site to begin activities.

(2) An offered, but unfilled slot is reimbursed \$30. A slot is considered offered but "unfilled" when an actual workfare, education, or training opportunity is made available to a participant, but the participant either refuses the assignment or fails to report to the assignment.

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

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## Subchapter D. Support Services for Participants

### 40 TAC §§813.31-813.33

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

§813.31. Provision of Support Services.

Support services identified in this subchapter shall be provided, if needed, to an E&T Program participant to remove barriers from participation in the program, subject to the availability of resources and funding.

§813.32. Child Care Services.

Child care services are governed by rules contained in Chapter 809 of this title (relating to Child Care and Development).

§813.33. Transportation Assistance.

(a) Transportation assistance may be provided for E&T Program participants if alternative transportation resources are not available to the participant.

(b) The methods and amounts used to provide transportation assistance shall be determined by each local workforce development

board, consistent with state policy which requires use of the most economical means of transportation that meets the participant's needs.

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

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J. Randel (Jerry) Hill

General Counsel

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## Subchapter E. Complaints and Appeals

### 40 TAC §§813.41-813.43

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

#### §813.41. Appeals of Decisions Made on Food Stamp Applications and Benefits.

Applicants and recipients of Food Stamp benefits may appeal adverse action taken on their application for benefits or the amount of benefits to the Department of Human Services (DHS) in accordance with DHS rules pursuant to §3.3406 of this title (relating to Right to Appeal).

#### §813.42. Appeals of E&T Program Decisions.

(a) E&T Program staff shall inform participants of their right to appeal a decision related to employment services or support services and the procedures for requesting a fair hearing.

(b) Food Stamp E&T Program participants who are dissatisfied with E&T Program decisions affecting activities or support services, may have an informal review of these decisions through procedures established by the Commission or Local Workforce Development Boards.

(c) Participants may also file an appeal of the decision under the general hearings process as contained in the Commission rules in Chapter 823 of this title (relating to General Hearings). The request must be submitted in writing to the Appeals Department, Texas Workforce Commission Building, 101 East 15th Street, Room 410; Austin, Texas 78778-0001, within 30 calendar days of the date of the decision.

#### §813.43. Discrimination Complaints.

(a) Any participant alleging discrimination on the basis of age, race, color, national origin, or physical or mental disability has a right to file a written complaint of alleged discriminatory acts within 180 calendar days from the date of the alleged discriminatory act. Complaints must be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, TX 78778-0001.

(b) Commission staff, Local Workforce Development Boards or their service providers, and any other service provider must advise individuals who express an interest in filing a discrimination complaint of their right to file a complaint and the complaint procedures.

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

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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## Chapter 815. Unemployment Insurance

### 40 TAC §§815.1, 815.6, 815.7, 815.9, 815.14, 815.16, 815.17, 815.20, 815.22, 815.31, 815.32

The Texas Workforce Commission (Commission) proposes amendments to §§815.1, 815.6, 815.7, 815.9, 815.14, 815.16, 815.17, 815.20, 815.22, 815.31, and 815.32, concerning unemployment insurance.

The purpose of the amendments is to update references within the rules contained in Chapter 815 relating to Unemployment Insurance by making technical changes to the rules. Generally, the technical changes include changing the name of the Commission from the "Texas Employment Commission" to the "Texas Workforce Commission" or "commission" and similar non-substantive changes for conformity with Texas Labor Code, Title 4, Subtitle A (the Act) and Subtitle B.

The proposed amendments include the following changes:

Regarding §815.1, numbering the definitions as required by the new *Texas Register* format;

Regarding §815.1(1), and the definition of "Act", changing "being Title 4, Subtitle A, Labor Code, Vernon's Texas Codes" to "Texas Labor Code Annotated, Title 4, Subtitle A";

Regarding §815.1(2), and the definition of "additional claim," changing the time frame from 12 to 14 days in which employers must respond to notices of additional claims to conform with changes in the Act;

Regarding §815.1(5), and the definition of "commission," changing "Texas Employment Commission" to "Texas Workforce Commission";

Regarding §815.6(b) and (g), changing "Texas Employment Commission" to "commission" in three places;

Regarding §815.7(b) and (e), changing "agency" to "commission";

Regarding §815.9(g), changing "agency" to "commission";

Regarding §815.14(f), changing "administrator, the assistant administrators, and the chief of tax department" to "executive director, or the executive director's designee";

Regarding §815.16(2), changing "Texas Employment Commission" to "commission";

Regarding §815.16(3)(C), changing "administrator" to "executive director";

Regarding §815.16(3)(C), changing "the Act, §202.064" to "Texas Labor Code, §301.064";

Regarding §815.17(e), deleting the reference to "§815.16(c)" as there is no "(c)" in §815.16;

Regarding §815.17(g), changing "Texas Employment Commission" to "Texas Workforce Commission";

Regarding §815.20, changing "Texas Employment Commission" to "commission" in first paragraph;

Regarding §815.20(7)(F), adding the "Sale of Business" disqualification under §207.051 of the Act, to the list of disqualifications to conform with changes in the Act;

Regarding §815.22(b), changing "administrator" to "executive director" in two places;

Regarding §815.31(a), changing "Texas Employment Commission, TEC Building, Austin, Texas 78778" to "Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78778-0001";

Regarding §815.32(c)(1), changing "Texas Employment Commission (TEC)" and "TEC" to "commission";

Regarding §815.32(c)(5), (6), and (7) , changing "TEC" to "commission";

Regarding §815.32(d)(2), changing "TEC" to "commission";

Regarding §815.32(e)(3) and (4), changing "TEC" to "commission";

Regarding §815.32(f), changing "Texas Employment Commission" to "commission";

Regarding §815.32(g), changing "Appeal Tribunal" to "appeal tribunal";

Regarding §815.32(h), changing "TEC" to "commission" in two places; and

Regarding §815.32(i)(1), (2), and (3) changing "Appeal Tribunal" to "appeal tribunal."

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 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 governments as a result of enforcing or administering the amendments;

There are no probable economic costs to persons required to comply with the rule amendments; and

There is no anticipated adverse impact on small businesses as a result of enforcing or administering the amendments.

Dan Kahanek, Deputy Director of Appeals, 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 are to make the references within

Chapter 815 clearer for the public to understand and consistent with the recent changes to the Act.

All official comments submitted to Mr. Kahanek will be considered before the final rule amendments are adopted. Comments on the proposed amendments may be submitted to Dan Kahanek, Deputy Director of Appeals, Texas Workforce Commission, 101 East 15th Street, Room 414, Austin, Texas 78778-0001, (512) 463-2817. Comments may also be submitted via fax to Dan Kahanek at (512) 475-1135 or e-mail at "dan.kahanek@twc.state.tx.us."

The amendments are proposed under Texas Labor Code, §301.061, which provides the Commission with the authority to adopt, amend, and repeal such rules as it deems necessary for the effective administration of the Texas Labor Code, Title 4.

The proposed amendments affect Texas Labor Code, Titles 2 and Title 4.

#### §815.1. Definitions.

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 Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. [~~being Title 4, Subtitle A, Labor Code, Vernon's Texas Labor Codes Annotated~~], as amended.]

(2) Additional claim—A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 [12] days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(3) Base period with respect to an individual—The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of such individual's benefit year.

(4) Benefit period—The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

(5) Commission—The Texas Workforce Commission [~~Texas Employment Commission~~].

(6) Day—A calendar day.

(7) Landman—An individual who is qualified to do field work in the purchasing of right-of-way and leases of mineral interests, record searches, and related real property title determinations, and who is primarily engaged in performing such field work.

(8) Reopened claim—The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, i.e., illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(9) Week—A period of seven consecutive calendar days ending at midnight on Saturday.

§815.6. *Records of Employing Units.*

(a) (No change.)

(b) Each employing unit shall keep, in addition to the records required by subsection (a) of this section, such records as will establish and reflect the ownership and any changes of ownership of such employing unit, the correct address where the headquarters of the employing unit is located, and also the correct mailing address of the employing unit. The records shall also show clearly the address at which such records are available for inspection or audit by representatives of the commission [~~Texas Employment Commission~~]. Such records shall show the addresses of owners of the employing unit; or in the event the employing unit is a corporation or an unincorporated organization, such records shall show the addresses of directors, officers, and any persons on whom subpoenas, legal processes, or citations may be served in Texas. In the event the employing unit is a member of a group account, such records shall show the address of the group representative.

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

(g) All records shall be so kept and maintained as to establish clearly the correctness of all reports which the employing unit is required to file with the commission and shall be readily accessible to authorized representatives of the commission within the geographical boundaries of the State of Texas; and in the event such records are not maintained or are not available within Texas, the employing unit shall pay to the commission [~~Texas Employment Commission~~] the expenses and costs incurred when a representative of the commission [~~Texas Employment Commission~~] is required to go outside the State of Texas to inspect or audit such records.

(h)-(i) (No change.)

§815.7. *Reports Required and Their Due Dates.*

(a) (No change.)

(b) Each taxed employer shall submit to the commission, within the month during which contributions for any period become due, and not later than the date on which contributions are required to be paid to the commission, an employer's quarterly report showing the total amount of remuneration paid during the preceding calendar quarter for employment (or showing that no remuneration was paid during such quarter), showing the total amount of wages (as defined in the Act, §201.081 and §201.082) paid during such quarter for employment, and showing the amount of wages for benefit wage credits (as defined in the Act, §207.004) paid to each individual during such quarter for employment and the social security account number and name of each individual to whom such wages were paid, and showing other information called for on the employer's quarterly report. The employer's quarterly report shall be made on commission forms printed by the commission or by magnetic or electronic media using a format prescribed by this commission [~~agency~~] and shall contain all facts and information necessary to a determination of the amount of contributions due. The filing of the report on magnetic or electronic media will be required to the extent provided below.

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

(e) All forms and magnetic or electronic media formats for the filing of reports provided for in this rule shall be furnished by the commission to each employing unit, upon application being made therefor, and all reports shall be filed upon the forms and magnetic or electronic media formats so furnished or on forms and magnetic or electronic media formats approved by the commission in writing. Failure to receive notice for making such reports will not, however, relieve the employing unit of the responsibility of making the reports upon the date on which they are due. Employers who

have to report 250 or more employees in any calendar quarter must file their quarterly wages as defined in the Texas Unemployment Compensation Act, §207.004, on magnetic or electronic media using a format prescribed by this commission [~~agency~~]. A magnetic or electronic media wage report may contain information from more than one employer. Employers with less than 250 employees may elect to use magnetic or electronic media reporting.

(f)-(j) (No change.)

§815.9. *Payment of Contributions and Reimbursements.*

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

(g) An agent or other entity making a payment on behalf of 20 or more employers shall furnish an allocation list on magnetic or electronic media using a format prescribed by this commission [~~agency~~]. This list shall be furnished with the remittance, and the remittance shall be allocated to the credit of the employers according to the order in which the employers appear on the list.

§815.14. *Employer Elections To Cover Multistate Workers.*

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

(f) Approval of reciprocal coverage elections. The commission hereby delegates to its executive director, or the executive director's designee, [administrator, the assistant administrators, and the chief of tax department] authority to approve or disapprove reciprocal coverage elections in accordance with this section.

§815.16. *Appeals to Appeal Tribunals from Determinations on Entitlement to Benefits.*

Appeals with respect to entitlement to benefits shall be in accordance with the terms of this rule and of §815.17 of this title (relating to Appeals to the Commission from Decisions on Entitlement to Benefits) and §815.18 of this title (relating to General Rules for Both Appeal Stages). As used in this rule and §815.17 and §815.18, "party" means an individual or organization entitled to receive a copy of the determination made by the examiner under the terms of the Act, §§208.021 and 212.051-212.052.

(1) (No change.)

(2) Disqualification of appeal tribunal. No appeals examiner shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any appeals examiner may be heard and decided by the supervisor of appeals or, in his discretion, be referred to the commission [~~Texas Employment Commission~~] for decision.

(3) Hearing of appeal.

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

(C) In appeals in which one or more parties are out of state, in which the parties are at different intrastate locations, in which both parties are at a location infrequently served by itinerant appeals referees, in which the commission is required by Texas Labor Code §301.064 [the Act §202.064], to provide language interpreters, or in which in-person hearings have been determined by the executive director [administrator] to be impractical because of large volume of appeals and/or limited funding resources, the appeal tribunal may schedule the hearing to be conducted by telephone. The rules and procedures governing hearings in general shall govern telephone hearings.

(4)-(6) (No change.)

§815.17. *Appeals to the Commission from Decisions on Entitlement to Benefits.*

(a)-(d) (No change.)

(e) Hearing of appeals. All commission hearings shall be conducted in the manner prescribed by §815.16[(e)] of this title (relating to Appeals to Appeal Tribunals from Determinations on Entitlement to Benefits) for hearings before appeal tribunals.

(f) (No change.)

(g) Motions for rehearing.

(1) A motion for rehearing may be filed by writing directly to the Texas Workforce [Employment] Commission in Austin, or such motion may be filed in person at any local commission office.

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

§815.20. *Claim for Benefits.*

An unemployed individual who has no current benefit year and who wishes to claim benefits shall report to an office of the commission [Texas Employment Commission], or to a representative of the commission at an itinerant service point or such other place or in such other manner, including telephonic or electronic means, as the commission may approve, register for work, and file a claim for benefits.

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

(7) The following provisions shall apply to the disqualification provisions of the Act, Chapter 207, Subchapter C, concerning disqualification for benefits.

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

(D) An employer identified as the employer by whom the claimant was employed, for purposes of satisfying the requalifying requirements of the Act, Chapter 207, Subchapter C, shall be afforded 14 [42] days within which to respond to notice by the commission of the filing of an additional claim by the claimant.

(E) (No change.)

(F) The fact that a disqualification was imposed on the basis of a given separation under the Act, §207.044, [or] §207.045, or §207.051 in a previous benefit year shall not prevent a disqualification on the basis of that separation if it is the last separation from work prior to the filing of an initial claim establishing a new benefit year. On filing an initial claim for benefits, a claimant shall not be subject to any disqualification under the Act, §§207.044, 207.045, [or] 207.047, or 207.051 unless such disqualification is based on that claimant's separation from his or her last work prior to the filing of the initial claim, or in the case of the Act, §207.047, such disqualification is based on events during the current benefit year established by the initial claim. The provisions in the preceding sentence shall not prevent disqualifications under the Act, §§207.044, 207.045, [or] 207.047, or 207.051 beginning during a benefit year and based on events occurring during that benefit year. If a new initial claim is not in order at the end of a benefit year but extended benefits are available beyond the end of the benefit year, then a disqualification imposed under the Act, §§207.044, 207.045, [or] 207.047, or 207.051 will continue beyond the end of the benefit year until extended benefits are terminated or the claimant qualifies to file a new initial claim, or until the disqualification is terminated in accordance with the terms of the subsection under which it was imposed.

(8)-(9) (No change.)

§815.22. *Special Claim Situations.*

(a) (No change.)

(b) On a finding by the commission that a foreign conflict creates an emergency situation which prevents the filing of claims in accordance with all of the provisions of §815.20 of this title

(relating to Claim for Benefits) and that such emergency is likely to continue for an extended period, the executive director [administrator] may permit the filing and payment of claims not meeting all of the requirements of §815.20 of this title (relating to Claim for Benefits). However, those requirements will be relaxed only to the extent that the executive director [administrator] finds necessary to prevent hardship or injustice that would otherwise be caused by the emergency.

§815.31. *Computation of Contribution Rates.*

(a) Computations of contribution rates under the Act, Chapter 204, will be made in accordance with work sheets which are herein adopted by reference and may be obtained from the Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78778-0001 [Texas Employment Commission, TEC Building, Austin, Texas 78778].

(b) (No change.)

§815.32. *Timeliness.*

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

(c) Address for proper mailing.

(1) For a claimant, the proper address is the address given by the claimant to the commission [Texas Employment Commission (TEC)] subject to later changes given by the claimant to the commission [TEC].

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

(5) If a party inadvertently provides the commission [TEC] with his own incorrect mailing address, a commission [TEC] mailing to that address will be a proper mailing.

(6) The commission [TEC] is not responsible for effectuating an address change when it is listed in correspondence or merely listed by a party on an appeal filed in person, unless specifically directed by the party.

(7) If the commission [TEC] improperly addresses a document, time frame for filing an appeal will begin to run as of the actual date of receipt by the party.

(8) (No change.)

(d) Date appeal perfected for in-person appeals.

(1) (No change.)

(2) Receipt date is date of receipt at the earliest commission [TEC] or agent state location.

(3) (No change.)

(e) Date appeal perfected for mailed documents.

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

(3) An appeal received in an envelope bearing no legible postmark or postal meter date will be considered to be perfected three business days before receipt by the commission [TEC], or on the date of the document, if less than three days earlier than date of receipt.

(4) If the mailing envelope is lost after delivery to the commission [TEC], appeal document date will control. If the document is undated, appeal date will be three business days before receipt by the commission [TEC], subject to sworn testimony establishing an even earlier date.

(f) Sworn testimony can establish a date for an appeal being perfected which is earlier than the postmark date. Only in the face of extremely credible evidence will a party be allowed to establish an appeal date earlier than a postal meter date or the date of the document itself. When a party alleges filing an appeal by the mailing of a

document which the commission [~~Texas Employment Commission~~] has never received, the party must present credible and persuasive testimony of timely filing corroborated by testimony of a disinterested party and/or physical evidence specifically linked to the appeal in question.

(g) Credible and persuasive testimony subject to cross-examination establishing timeliness allows the commission or the appeal tribunal [~~Appeal Tribunal~~] to rule on the merits.

(h) If a party submits an address change to the commission [~~TFC~~] during the appeal period (but after the commission [~~TFC~~] document was mailed to the old address), address change date will control and will be considered as date appeal was perfected.

(i) The substantive nature of certain cases causes, or creates, exceptions to the general timeliness rules, even where notice is proper or response is clearly late.

(1) Cases fitting into the wage credits/rights to benefits category present a one-time exception to the timeliness rules. A late appeal to the appeal tribunal [~~Appeal Tribunal~~] on such issues, if within the same benefit year, will be deemed timely. However, once a decision has been issued by the appeal tribunal [~~Appeal Tribunal~~], the appeal time limits in the Act, Chapter 212, will apply.

(2) In cases dealing with the imposition of fraud and forfeiture provisions of §214.003, there is a one-time exception at the appeal tribunal [~~Appeal Tribunal~~] stage, if:

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

(3) In cases where there is a continuing ineligibility or condition and there is a late appeal, the appeal tribunal [~~Appeal Tribunal~~] or the commission can assume jurisdiction 14 days before the late appeal, and rule on the merits if the facts so warrant.

(4)-(8) (No change.)

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

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TRD-9811257

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## **TITLE 7. BANKING AND SECURITIES**

### **Part VI. Credit Union Department**

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

##### **Subchapter G. Loans**

###### **7 TAC §91.701**

The Credit Union Department amendment has withdrawn from consideration for permanent adoption the proposed amendment §91.701, which appeared in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6110).

Issued in Austin, Texas, on July 20, 1998.

TRD-9811397

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: July 20, 1998

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



## **TITLE 28. INSURANCE**

### **Part I. Texas Department of Insurance**

#### **Chapter 21. Trade Practices**

##### **Subchapter C. Unfair Claims Settlement Practices**

###### **28 TAC §§21.202, 21.203, 21.206, 21.207**

The Texas Department of Insurance has withdrawn from consideration for permanent adoption proposed amendments to §21.202 and §21.203, and proposed new §21.206 and §21.207, relating to unfair claim settlement practices and complaint record requirements, which appeared in the March 27, 1998, issue of the *Texas Register* (23 TexReg 3189).

The department has withdrawn the section after careful consideration of comments submitted after publication of the proposal.

Elsewhere in this issue, the department has published for comment proposed amendments to §21.202 and §21.203, relating to unfair claim settlement practices, and new Chapter 21, Subchapter Q, relating to complaint records to be maintained by insurers.

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811406

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: July 20, 1998

For further information, please call: (512) 463-6320



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part XX. Texas Workforce Commission**

#### **Chapter 813. Food Stamp Employment and Training**

##### **Subchapter A. General Provisions**

###### **40 TAC §813.1, §813.2**

The Texas Workforce Commission has withdrawn the emergency adoption of new §813.1 and §813.2, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4719).

Filed with the Office of the Secretary of State on July 15, 1998.

TRD-9811152

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: July 15, 1998

For further information, please call: (512) 936-3501





# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 126. Surplus and Salvage Property

##### Subchapter A. State Surplus and Salvage Property

###### 1 TAC §126.3

The General Services Commission adopts amendments to §126.3, concerning the Disposition of Surplus and Salvage Property to the Public, without changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6107).

The adoption of amendmendments to 1 T.A.C., §126.3 allow for expeditious implementation of the revised purchaser fee after its annual review.

The adoption of amendments to 1 T.A.C., §126.3 will enable the General Services Commission to implement the revised purchaser fee after its annual review without amending the rules each year thereby serving the best interests of the Texas taxpayer.

No comments were received regarding amendments to 1 T.A.C., section 126.3.

The amendments to 1 T.A.C., section 126.3 is adopted under the Texas Government Code, Title 10, Subtitle D, Chapter 2175, §2175.181 and §2176.182, which provided the General Services Commission with the authority to promulgate rules consistent with the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 1998.

TRD-9811289

Judy Ponder

General Counsel

General Services Commission

Effective date: August 6, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 463-3960



## TITLE 7. BANKING AND SECURITIES

### Part VI. Credit Union Department

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

##### Subchapter B. Organization Procedures

###### 7 TAC §91.209

The Texas Credit Union Commission adopts amendments to §91.209, concerning reports and charges for late filing, with changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4447). The commission adopts the amendments to help administer the Credit Union Department's responsibility to regulate credit unions in Texas.

The department is charged, generally, with the duty to regulate state-chartered credit unions to ensure safety and soundness and compliance with state or federal laws, among other purposes. To implement its duties, the department, through the Credit Union Commissioner, regularly examines the financial condition and operations of credit unions. When needed, the commissioner may require submission of a report or other document to carry out the department's regulatory duty. A credit union's failure to timely file a required report or document impedes the efficient administration of the laws regulating credit unions and causes the department to incur additional expense. Amended rule §91.209 will motivate timely filing of reports and other documents required by the commissioner with the assessment of a separate charge of \$100 per day when the credit union fails to meet the submission deadline. In addition, if the required report or other document is not filed, the department will have the authority to conduct a supplemental examination for the purposes of completing the report or document and to assess a supplemental examination fee as prescribed in 7 TAC §97.113(c), which represents an additional expense being incurred as a result of the credit union's failure to submit the required report or document. The activities of the department are funded with assessments paid by credit unions and the charges and fees set forth in this section are expressly authorized under Texas Finance Code §15.402.

One comment was received from a state-chartered credit union over its concern that a specific credit union could be required by the Department to provide a very detailed, customized report that may be impossible to complete within the deadlines set by the Department. In response, the reports and documents to which this section applies are reports and documents that are required to be completed by all state credit unions, such as call reports and Year 2000 compliance reports; or reports related to certain activities or issues that affect a group of credit unions. It was not the Department's intent to make the amended rule applicable to information requests directed to a single credit

union. For clarification purposes, language was added to the subsection (a) to this effect.

The amended rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code; and to set reasonable supervision fees, charges, and revenues to be paid by a credit union.

§91.209. *Reports and Charges for Late Filing.*

(a) A credit union shall prepare and forward to the Department any report or other document which the Commissioner requires and will comply with all instruction relating to submitting the report or document. For the purposes of this Section, the Commissioner's request shall be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing and must specifically advise the credit union that the provisions of this Section apply to the request.

(b) If a credit union fails to file a report or provide a document within the timeframe specified in the instruction and after notice of non-receipt, the commissioner may assess a charge for the late filing of \$100 per day. The credit union shall pay the late charge to the department within thirty days of the assessment.

(c) If a credit union fails to file a report or provide the requested information within the specified time, the commissioner or any person designated by the commissioner may examine the books, accounts and records of the credit union, prepare the report or gather the information and charge the credit union a supplemental examination fee as prescribed in §97.113(c) of this title (relating to supplemental examinations). The credit union shall pay the fee to the department within thirty days of the assessment.

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 20, 1998.

TRD-9811395

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: August 9, 1998

Proposal publication date: May 8, 1998

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

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**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

**Chapter 3. Oil and Gas Division**

**16 TAC §3.9, §3.46**

The Railroad Commission of Texas (commission) adopts amendments to §3.9 and §3.46, concerning disposal wells and fluid injection into productive reservoirs. The amendments are adopted without changes to the proposed text as published in the June 4, 1998, issue of the *Texas Register*.

The commission amends both §3.9(a)(3) and §3.46(b)(1) to require submission of the statutorily prescribed fee for a disposal or injection well with the application.

The commission adds the following definition for "commercial disposal well" in §3.9(a)(4) and §3.46(b)(2): "a well whose owner or operator receives compensation from others for the disposal of oil field fluids and oil and gas wastes that are wholly or partially trucked or hauled to the well, and the primary business purpose for the well is to provide these services for compensation."

The commission also adds a requirement in both §3.9(a)(4) and §3.46(b)(2) that an applicant for a commercial disposal well specifically indicate on the application and in the published notice of application that it is for a commercial disposal well.

The commission amends notification requirements in both §3.9 and §3.46 to clarify that affected persons required to receive notice of a disposal or injection well application include those listed in the rule. The commission also adds language to clarify that surface owner for the purpose of notification means surface owner "of record."

The commission also changes the requirement for notice to adjacent offset operators, to notice to commission-designated operators of wells located within one-half mile of the proposed disposal or injection well.

The commission defines "of record" as "recorded in the real property or probate records of the county in which the property is located."

The commission adds §3.9(a)(5)(B) and §3.46(c)(2) to require that an applicant for a commercial disposal well permit give notice to adjoining surface tract owners.

The commission also adds §3.9(a)(5)(C) and §3.46(c)(3), requiring notice to any additional class of persons that the commission or its delegate deems appropriate in connection with a particular application.

The commission amends the definition of "affected person" to exclude competitors. The amendment clarifies commission policy that "affected person" does not include competitors not otherwise affected by an application.

The commission adds §3.9(a)(6)(A)(vi) and §3.46(d)(1)(F). These provisions add the following basis for modifying, suspending, or terminating a permit issued under §3.9 or §3.46: "waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations."

The commission deletes the reference to January 1, 1983, as the compliance deadline for pressure valve requirements in §3.9(a)(8)(B) renumbered as §3.9(a)(9)(B) and §3.46(g)(2). The provision is no longer necessary.

The commission amends current mechanical integrity test requirements by striking §3.9(a)(11)(A) and (B) and adding §3.9(a)(12)(A)-(D); by striking §3.46(j)(1) and (2) and adding §3.46(j)(1)-(4); and by renumbering the remaining provisions in §3.9(a)(11) and §3.46(j). The pressure test requirements in §3.9(a)(12) and §3.46(j) are currently utilized by the commission in the administration of its pressure test program for disposal and injection wells.

The commission adds §3.9(a)(12)(A) and §3.46(j)(1). These provisions provide that the purpose of mechanical integrity testing is to determine whether any leak in the well tubing, packer, or casing exists, by either conducting pressure tests or by using alternative testing methods authorized by the commission.

The commission adds §3.9(a)(12)(B) and §3.46(j)(2). The provisions require that the mechanical integrity of each disposal or injection well be demonstrated in accordance with §3.9(a)(12)(D) and (E) or §3.46(j)(4) and (5) prior to initial use. Additionally, the provisions require that mechanical integrity be tested periodically thereafter in accordance with proposed §3.9(a)(12)(C) and §3.46(j)(3).

The commission adds §3.9(a)(12)(C)(i) and §3.46(j)(3)(A), which incorporate requirements in the former §3.9(a)(11) and §3.46(j)(2), that each disposal or injection well be tested once every five years.

The commission adds §3.9(a)(12)(C)(ii) and §3.46(j)(3)(B) to clarify that mechanical integrity testing is required after every workover of a disposal or injection well.

The commission adds §3.9(a)(12)(C)(iii) and §3.46(j)(3)(C) to clarify that the five-year testing schedule is not applicable to a disposal or injection well that is completed without surface casing set and cemented through the entire interval of protected usable-quality ground water. Wells completed without surface casing set and cemented through the entire interval of protected usable-quality ground water must be tested at a greater frequency as prescribed in the disposal or injection well permit.

The commission adds §3.9(a)(12)(C)(iv) and §3.46(j)(3)(D), which incorporate the former §3.9(a)(12)(B) and §3.46(j)(2). The provisions authorize the commission or its delegate to prescribe a schedule for testing and to mail notification of the schedule to operators. The schedule prescribed by the commission is not applicable to a disposal or injection well for which a disposal or injection permit has been issued when the well covered by the permit has not been drilled or converted to disposal or injection.

The commission incorporates the requirements of the former §3.9(a)(11)(A) and §3.46(j)(1) in §3.9(a)(12)(D)(i) and §3.46(j)(4)(A). These provisions require that test pressure for wells equipped to dispose or inject through tubing and packer must equal the maximum authorized injection pressure or 500 psig, whichever is less, but must be at least 200 psig; and the test pressure for wells that are permitted for disposal or injection through casing must equal the maximum permitted injection pressure or 200 psig, whichever is greater.

The commission adds §3.9(a)(12)(D)(ii) and §3.46(j)(4)(B) to require that test pressure stabilize within 10 percent of the required test pressure prior to commencement of the test.

The commission adds §3.9(a)(12)(D)(iii) and §3.46(j)(4)(C) to require maintenance of a pressure differential of at least 200 psig between the test pressure on the tubing-casing annulus and the tubing pressure.

The commission adds §3.9(a)(12)(D)(iv) and §3.46(j)(4)(D) to require that a pressure test be conducted for a duration of 30 minutes when the test medium is liquid, and 60 minutes when the test medium is air or gas.

The commission adds §3.9(a)(12)(D)(v) and §3.46(j)(4)(E) to require, except in cases where the test is witnessed by the commission, that a pressure recorder be used to monitor and record the tubing-casing annulus pressure. The provisions also provide that the recorder clock can not exceed 24 hours and that the recorder scale must be set so that the test pressure is 30 to 70 percent of full scale, unless otherwise authorized by the commission or its delegate.

The commission adds §3.9(a)(12)(D)(vi) and §3.46(j)(4)(F) to require that the tubing-casing annulus fluid used in a pressure test be liquid for wells that inject liquid, unless some other fluid is specifically authorized by the commission or its delegate for good cause. The provisions also require that the tubing-casing annulus fluid contain no additives that affect the sensitivity or otherwise reduce the effectiveness of a test.

The commission adds §3.9(a)(12)(D)(vii) and §3.46(j)(4)(G). The provisions provide that the commission or its delegate will consider, in evaluating the results of a test, the level of pollution risk that loss of well integrity would cause. Factors that will be taken into account in assessing pollution risk include injection pressure, frequency of testing and monitoring, and whether there is sufficient casing to cover all zones containing usable-quality water. The provisions also authorize the commission to reject a pressure test after consideration of the following factors: the degree of pressure change during the test, if any; the level of risk to usable-quality water if mechanical integrity of the well is lost; and whether circumstances surrounding the administration of the test make the test inconclusive.

The commission amends alternative testing provisions in §3.9(a)(11)(C) and §3.46(j)(3), renumbered as §3.9(a)(12)(E)(ii) and §3.46(j)(5)(B), to reflect current commission practice of requiring alternative tests or surveys as a permit condition.

The commission amends §3.9(a) by deleting paragraph (14) which provides that the section takes effect on April 1, 1982. The provision is no longer necessary.

The commission amends §3.46 by deleting subsection (m), which provides that the section takes effect on April 1, 1982. The provision is no longer necessary.

The commission renumbers §3.46(o) as §3.46(k).

The commission amends §3.46(o)(2), renumbered as §3.46(k)(2), to clarify that the surface owner, for the purposes of notification, means the surface owner "of record." Amendments to the provision also require notice to commission designated operators of wells located within one-half mile of the permit area.

The commission renumbers §3.46(n) as §3.46(l) and §§3.46(k) and (l) as §§3.46(m) and (n).

Two comments were received on the proposed amendments from the Texas Oil & Gas Association (TxOGA) and Roosth Production Company (Roosth).

TxOGA commented that it fully supported the proposed changes.

Roosth commented that the proposed definition of "of record," to mean recorded in the real property or probate records, is not the same as recorded in the county tax records. The comment stems from a reference to county tax records in the financial analysis discussion in the preamble to the proposed amendments. The preamble discussion addressed the requirement that a commercial disposal well applicant give notice to adjacent surface owners. But Roosth is not a commercial disposal well operator. In further discussions, the commission staff discovered that the commenter's concerns actually relate to the requirement that an applicant for a disposal or injection well give notice to the surface owner "of record" on the property where the well will be located.

The current procedure used by Roosth to fulfill notice requirements is to check the tax records and call the listed party to confirm that they are the owner. The amendments to §3.9 and §3.46 do not prevent operators from identifying property owners in this manner. That is a business decision made by the operator. Instead, the amendments simply clarify the standard to which an operator will be held if notice is subsequently challenged. This means that a defective notice challenge will be upheld if a party has a recorded interest in the real property or probate records and does not receive notice of the application.

The commission made no change in response to the comment because notice to surface owners of record is already required under §§3.9 and 3.46. Therefore, there are no additional costs associated with the amendments. The term "of record" was added by the commission only to provide operators more certainty in fulfilling the notice requirements. The change allows operators to rely on real property and probate records to identify surface owners, whereas under current §§3.9 and 3.46 it is not clear that a search to identify surface owners is limited to recorded interests.

The following groups or associations commented on proposed amendments to §3.9 and §3.46: Texas Oil & Gas Association.

The amendments to §3.9 and §3.46 are proposed under Texas Water Code, Chapter 27, which authorizes the commission to adopt and enforce rules relating to oil and gas waste disposal wells and Texas Natural Resources Code, §81.052, which authorizes the commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the commission under §81.051; §85.042(b), which authorizes the commission to adopt and enforce rules for the prevention of operations in the field dangerous to life or property; §85.201, which authorizes the commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; §85.202, which authorizes the commission to adopt rules to prevent waste of oil and gas in producing operations and to require wells to be operated in a manner that will prevent injury to adjoining property; and §91.101, which authorizes the commission to adopt rules for the prevention of pollution of surface or subsurface water associated with the disposal of oil and gas waste.

Texas Water Code, Chapter 27 and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, and 91.101 are affected by these amendments.

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 15, 1998.

TRD-9811142

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: August 4, 1998

Proposal publication date: June 5, 1998

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

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**16 TAC §3.103**

The Railroad Commission of Texas adopts new §3.103, concerning a procedure to obtain certification of eligibility for a severance tax exemption for gas from an oil well or lease that was

previously vented or flared and is now marketed. The new section is adopted without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5546).

The commission adopts the section to implement the Texas Tax Code, §201.058, which was added by the 75th Legislature, Regular Session, effective September 1, 1997. The purpose of this section is to provide for certification by the commission that an operator produces and markets casinghead gas that was previously vented or flared from an oil well or oil lease pursuant to the rules of the commission. Operators who wish to participate in the voluntary program shall apply on the appropriate form accompanied by information necessary to establish prior release into the air of casinghead gas for 12 months or more during a period of 13 consecutive months, and taxable proceeds generated as a result of marketing such gas on or after September 1, 1997. The section provides an opportunity for a hearing if an operator's request for certification is administratively denied.

Participation in this incentive is voluntary. Implementation of this tax incentive should result in the capture and marketing of casinghead gas which otherwise would have been released into the air without beneficial use.

Texas Independent Producers & Royalty Owners Association was the only commenter. The association favors the section and suggested no changes in the proposed text.

The new section is adopted under the commission's general rulemaking authority over all persons and their operations under the jurisdiction of the commission as set forth in the Texas Natural Resources Code, §81.052.

Texas Tax Code, §201.051 and §201.053 are affected by 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 15, 1998.

TRD-9811141

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: August 4, 1998

Proposal publication date: May 29, 1998

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

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

**Chapter 23. Substantive Rules**

**Subchapter H. Telephone**

**16 TAC §23.98**

The Public Utility Commission of Texas (PUC) adopts an amendment to §23.98, relating to Abbreviated Dialing Codes with changes to the proposed text as published in the January 30, 1998, *Texas Register* (23 TexReg 695). The PUC requested reply comments in the March 27, 1998, *Texas Register* (23

TexReg 3370). The amendment is necessary to implement the First Report and Order in 12 FCC Rcd. 5572, CC Docket Number 92-105, FCC 97-51, *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements* (FCC Order). The proposed amendment to §23.98 allows telecommunications providers to use 311 for non-emergency police and governmental services pursuant to the FCC Order. This amendment was adopted under Project Number 17264.

A public hearing on the amendment was held at commission offices on March 2, 1998. Representatives from the City of Austin (Austin), the City of Plano, the City of Dallas, Sprint, Texas Statewide Telephone Cooperative, Inc. (TSTCI), the Advisory Commission on State Emergency Communications (ACSEC), AT&T Communications of the Southwest, Inc. (AT&T), GTE Southwest, Inc. (GTE), and Southwestern Bell Telephone Company, Inc. (SWBT) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed amendment from Austin, the Tarrant County 911 District (Tarrant), TSTCI, ACSEC, AT&T, GTE, and SWBT.

Parties offered general comments and suggestions regarding the establishment of 311 services. Austin disagreed with staff's comments regarding the anticipated economic impact to communities which comply with the amendment and establish 311 service. Austin advised that §23.98(f)(8), which prohibits completion of 311 calls over the 911 network or the use of the 911 database, would require an investment in new hardware, a new software database, new employees, and additional and unnecessary overhead expenses.

Although Austin's desire to make dual use of its 911 service network for the provision of 311 service is understandable, the commission regards the integrity of the 911 network as paramount. The 311 service networks will be a matter of choice for government entities and are intended to provide an alternative route for non-emergency calls, alleviating the congestion of the 911 network. The emergency nature of 911 services and the considerable expense and regulation the 911 network entails provide ample reason to separate the two networks. The economic impact of 311 networks is highly variable depending on a governmental entity's decisions on whether to establish a 311 network, the scope of its implementation, and whether the 311 network generates additional citizen calls or merely reroutes established calling patterns. The Federal Communications Commission (FCC) clearly indicated that the establishment of 311 networks should be left to the discretion of local government and law enforcement agencies. But the FCC also clearly indicated that the purpose of 311 is to alleviate the burden on the 911 system, not to add new tasks for the 911 system to perform. Therefore, the commission is not persuaded to modify its position that 311 services must be operated over a separate network.

Tarrant noted its concerns regarding the proliferation of N-1-1 numbers and asserted that, other than Directory Assistance or Repair services, the only N-1-1 dialing code available to the public should be 911 service. As Tarrant notes, the objective of implementing 311 may vary according to the community and it is therefore prudent to separate the 911 network from the 311 network.

TSTCI stated that its main concern is protecting the integrity of the 911 network. In conjunction with this view, TSTCI was satisfied with the prohibition of the use of the 311 dialing code for commercial purposes as proposed in the amendment.

ACSEC observed that the proposed amendments to the rule do not address public education for 311 services. ACSEC stated that the FCC and the commission appear to be deferring this issue to local communities and suggested that the commission may want to consider public education for 311 service usage when evaluating requests for the provision of 311.

ACSEC's assessment that public awareness of the 311 service network is essential to its proper use has merit. The commission has amended the rule as published (at §23.98(f)(4)(D)) to require submission of a plan for public education at the time 311 service is proposed for implementation.

Tarrant argued that once 311 service has been established and the public educated to its use, a discontinuance of the service would have serious consequences. Tarrant proposes a mandatory minimum contract period for the provision of 311 service and would require that discontinuance of the service should require advance public notice, equal to that employed when the service was initiated.

Tarrant is correct in its assessment that the discontinuance of 311 service, once established, will produce a significant impact upon a community. To address the concerns of Tarrant, language has been added to §23.98(f)(13) and (14) to require the filing of a notice of termination of 311 service to adequately address Tarrant's concern and publication of the notice through the *Texas Register*.

The commission also amended §23.98(f)(1) to read "...the assignment, provision *and termination* of 311 service."

Commenters also addressed specific language in the proposed amendments which will now be reviewed in order of appearance.

Parties commented on §23.98(f)(2)(B) which defines the term "governmental entity."

SWBT asked whether departments under the control of a municipality or county should be considered governmental entities and SWBT stated that in §23.98(f)(2)(B) "governmental entity" should be defined.

The commission considered SWBT's concern in the development of the amendment. However, the term "governmental entity" allows greater flexibility and the notice requirements of the amendment address the disadvantage of using a broad definition. Through notice, surrounding governments and other entities will be afforded the opportunity to voice any concerns or prevent duplicative networks. Therefore, the commission declines to adopt SWBT's suggestion. The commission also deleted the date reference to the statute so that the rule will not have to be amended every time the statute is amended.

Parties commented on §23.98(f)(2)(C) which defines "911 System."

Austin stated that §771.001 of the Texas Health & Safety Code does not define "911 system." Austin suggested that the proposed rule, at §23.98(f)(2)(C), include the definition: "911 system means a system of processing 911 calls," such as the definition proposed for "311 system."

The commission notes this suggestion but instead replaces "§771.001" with "§772.001" of the Texas Health and Safety Code thereby addressing Austin's concern. The commission also made the additional change of deleting the date reference to the statute so that the rule will not have to be amended every time the statute is amended.

Parties commented on §23.98(f)(2)(E) which defines "311 answering point."

AT&T suggested that certain provisions of §23.98(f)(2)(E) should be clarified, such as the definition of the "311 answering point". AT&T stated §23.98(f)(2)(E)(i) was unduly restrictive in limiting the 311 answering point to normal business hours and suggested that the language "at a minimum" be inserted. GTE also suggested revision of §23.98(f)(2)(E)(i) and proposed language to read "is operated at a minimum during normal business hours;" to accommodate a period greater than normal business hours. Austin also suggested the language "(i) is operated, *at a minimum*, during normal business hours" to allow governmental entities the option of providing 311 services beyond normal business hours.

The commission finds these suggestions reasonable so to provide greater flexibility the language at §23.98(f)(2)(E)(i) is revised to read, "is operated, *at a minimum*, during normal business hours."

Finally, Tarrant asserted that 911 service is busier after "normal" business hours and, because 311 service is meant to alleviate congestion on the 911 network by re-directing non-emergency calls to appropriate agencies, Tarrant recommended that 311 services should be operated on a 24 hour seven day basis.

The commission believes the definition of the 311 answering point is adequate and declines to adopt Tarrant's suggestion.

With respect to §23.98(f)(2)(E)(ii), AT&T stated it believes 311 calls may be directly routed to the government service-provider (in its example, a police officer walking a beat). AT&T proposed the deletion of (E)(iii) because it is unduly restrictive in that it discourages more innovative approaches to answering 311 calls. AT&T suggested modifying the provision to read: "(iii) is the first point of reception by a governmental entity of a 311 call *or the CTU's switch, if that switch then reroutes calls to governmental entities intended to be reached by citizens dialing 311.*"

It is not the commission's intent to discourage innovation; however, the commission is not persuaded by AT&T's argument regarding the incorporation of language which offers the CTU switch as an alternative to the center controlled by the governmental entity. Should governmental entities in the future desire specific alternatives for the handling of 311 calls, the commission will consider such proposals for further amendment of the rule. Therefore the commission rejects AT&T's request.

Parties commented on §23.98(f)(2)(G) which defines "311 service request."

AT&T discussed its concern that §23.98(f)(2)(G)'s definition of a "311 service request" does not specifically address what constitutes the initial communication for 311 service. AT&T suggested that a six-month timeframe triggered by a written request be included in the proposed amendment and offered the following language; "311 service request means the *written request from a governmental entity to a certificated telecommunications utility requesting the provision of 311 service.*"

AT&T's suggestions appear to clarify the initiation of the six month time frame for implementation of 311 service. Therefore §23.98(f)(2)(G) is modified to incorporate the language suggested by AT&T. In addition, the commission amended the rule further to define the ambiguous phrases in AT&T's proposal.

SWBT argued that governmental entities should be required to make a binding request in order for the provider to avoid expenses and time when attempting to comply with the six-month deadline.

The commission rejects SWBT's suggestion.

Parties commented on §23.98(f)(4)(C) which sets forth the requirements of a certificated telecommunications utility's (CTU) application to provide 311 service.

Parties disagreed as to whether charges should be allowed for use of 311 service. SWBT agreed with §23.98(f)(4)(C)'s restriction that no governmental entity should be allowed to charge a fee for using the 311 system. Despite its support for the restriction, SWBT suggests clarification indicating that a 311 call placed from a pay telephone will still require the calling party to pay a local call charge.

Austin strongly disagreed with §23.98(f)(4)(C)'s restriction and stated that such a prohibition regarding fees for 311 service will require payment for the 311 system out of an already strained budget. Austin did not suggest charging citizens for using 311 but stated that if the proposed amendment's restriction on use of the 911 network for 311 services stands, then 311 services must be purchased at an additional cost to taxpayers.

The commission is not persuaded that it is in the public interest to incorporate 311 services into the existing 911 network. Although Austin's point regarding additional costs for implementing 311 service may be true, implementation of a 311 service system is simply an option to be considered by governmental entities; it is not a requirement. The goal of 311 implementation is the alleviation of unnecessary traffic on the 911 network. If 311 calls are handled in addition to the existing 911 traffic over the same facilities and by the same staff, the objective of implementing a 311 service network has been thwarted. Because the 311 network will direct non-emergency calls to appropriate governmental agencies, the imposition of a per use fee appears inappropriate. SWBT is correct that 311 calls may incur a charge when made from pay telephones unless a municipality makes alternative arrangements within its jurisdiction or future legislation states otherwise.

Parties commented on §23.98(f)(5)(A) which sets forth the requirement that CTUs file a copy of the text of the CTUs' proposed notice to the public.

SWBT suggested that the provider file notice only after a signed contract or letter of intent is received.

Clarification appears necessary to avoid unnecessary expenditures by the parties. The intention of this section is the avoidance of last minute intervention in the 311 service implementation process. Without proper and timely notice, parties are at risk of preparing a complex and costly implementation plan for a 311 system which may be in conflict with another governmental entity's plans. Thus, the commission will base notice on the written receipt of the 311 service request. Accordingly, the commission rejects SWBT's modification.

Parties commented on §23.98(f)(7) which concerns how a 311 service request starts the six-month deadline by which "...any

necessary steps to complete 311 calls..." are taken pursuant to the FCC Order.

AT&T suggested that §23.98(f)(7), regarding the trigger of the 6-month deadline, be modified so that the 311 service request "shall start" the six-month time limit. AT&T's modification language is, "(7) A 311 service request *shall start* the six-month time limit to 'take any steps necessary to complete 311 calls.'" GTE also suggested modification of §23.98(f)(7) to allow adequate time for the tasks necessary to implement 311 service. GTE's suggested modification is, "(7) A 311 service request begins when the commission approves the customer application to provide 311 service and starts the six-month time limit to 'take any necessary steps to complete 311 calls' as required by the Federal Communications Commission's Order, *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket Number 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997)." Similarly, SWBT recommended that the six-month period referenced in §23.98(f)(7) should begin on the date the binding request was executed.

Again, clarification of the starting point for the six month time limit appears necessary and the commission believes AT&T's suggested language is most appropriate, therefore §23.98(f)(7) is so modified. The PUC rejects GTE's suggestion of tying the six-month period to commission approval because it could lead to attempts to "game" the regulatory approval process to delay a CTU's provision of 311 service.

Parties commented on §23.98(f)(8) which sets forth the prohibition of completing 311 calls over the 911 network or use of 911 databases.

AT&T suggested that §23.98(f)(8) be modified so that information in the 911 database may be copied into the 311 database. AT&T recommended this modification because incumbent local exchange carriers may not want to provide a copy of the 911 information. Further, AT&T stated that to the extent a governmental entity is required to be compensated for a copy of the information in the 911 database, compensation to the ILEC should be limited to the 911 database keeper's cost to make a copy of the information, i.e., the cost of producing electronic tapes or other media. To these ends, AT&T proposed the following language: "The 311 network shall not be completed over the 911 network or use the 911 database. *Upon written request from a governmental entity, a copy of information contained in the 911 database will be provided to provide 311 service. The copy will be provided in electronic form and compensation for the copy will be no more than the cost of producing the copy in electronic form.*"

SWBT supported the exclusion of 311 calls from the 911 network and database. However, SWBT expressed its concern that should the 911 administration move the 911 network from existing, dedicated facilities to the public switched telephone network, this would result in 911 calls being completed using portions of the 311 network, which would be a violation of the proposed rule.

ACSEC also supported the restriction against use of the 911 network and database to provision 311 stating that use of the same network would create problems for routing of emergency calls. In addition, ACSEC noted that use of the 911 database for 311 calls could create customer privacy and competitive neutrality concerns. ACSEC asserted however, that

the potential for tort liability should discourage improper use of the 911 network and database for 311 purposes.

Consistent with its earlier positions, Austin proposed changing §23.98(f)(8) so that 311 calls may be completed over the 911 network and use the 911 database. Austin identified certain needs and requirements for effective use of 311 including 1) rapid, efficient response to all calls, both 911 & 311, 2) calls answered by trained professional call takers, 3) call taker access to Automatic Location Identification (ALI) and Automatic Number Identification (ANI) information, 4) use of existing 911 database accuracy, 5) selective routing to the proper jurisdiction, and 6) one button transfer from 911 to 311 and/or 311 to 911. Austin argued its intelligent 911 network contains a Automatic Call Distributor (ACD) so any negative impacts to the 911 system by using it for 311 will be easily addressed. Austin stated that the ACD would assign the highest priority to 911 calls and a lower priority to 311 calls, so 911 calls will be processed first. Austin also said that its intelligent 911 system will give an automatic message to 311 callers when the call volume reaches a certain level. Austin said the message would be to hang up and dial 911 if an emergency, or if not, to call back later or leave a message to be returned by a call taker.

In addition, in its reply comments, Austin proposed that §23.98(f)(8) should read: "311 calls shall be completed over a network that is separate from a dedicated 911 network, but the following uses of a 911 system for 311 public safety calls, specifically law enforcement, fire, and emergency medical services, are not prohibited: (i) use of a common automatic call distribution system (ACDS); and (ii) appropriate use of a 911 network and 911 database if such use does not degrade 911 emergency service and has the prior approval of the 911 entity and, if applicable, the Advisory Commission on State Emergency Communications." Austin also proposed this language without reference to transferring calls because a 911 prioritized call system could be established in which a pre-specified call volume would trigger a conversion of 311 calls so that 311 callers would receive a recorded message until the 911 call volume decreased. Austin said such use would not involve the actual transfer of a call, but would establish a prioritized call system in which 911 calls would receive priority over 311 calls at all times.

If the 311 service network was envisioned for emergency use, many of the parties' concerns would be valid; however, given the non-emergency nature of 311 these concerns diminish in importance. It is conceivable that a citizen may dial 311 in error when seeking 911 service, particularly if public education is not adequately addressed. However, parties calling 311 are ideally seeking to report situations requiring the attention of a governmental agency (i.e., traffic blockage, noise complaints, animal or tree removal, etc.). Such calls need not be recorded or dispatched in the same way as the emergency calls for which 911 service is intended. Although the commission appreciates the complexity of telecommunications devices employed for the identification and routing of calling parties, it is not convinced that the 311 service network when implemented requires such support. To address SWBT's concerns, when and if 911 is ready to migrate to the public switched network, the commission does not intend for this provision to prohibit such a migration. Lastly, the commission generally rejects the suggestions of AT&T and Austin because the commission is not persuaded by their arguments. Specifically, the commission rejects Austin's argument because even with an ACD or ACDS, a 911 system



can only have a finite number of lines. It is possible that such a system will reach its capacity by receiving both 911 and 311 calls. This could lead to emergency 911 calls going unanswered due to call takers answering non-emergency 311 calls.

Parties commented on §23.98(f)(10) which sets forth when a CTU must have a ten-digit number for 311 caller anonymity when the 311 answering point uses ANI, ALI, or other equivalent non-blockable information-gather feature.

AT&T noted with regard to §23.98(f)(10) that the use of a 10 digit number will be the rule, not the exception given recent commission actions regarding NPA relief in Dallas and Houston. Therefore, AT&T proposed the commission require use of a 10-digit number, rather than a seven-digit one. AT&T also suggested governmental entities be allowed to block ALI information for unlisted numbers so that names and address data will not be visible to operators or dispatchers. AT&T stated that using ANI information for routing calls is a standard procedure and should not be deemed an invasion of privacy.

SWBT said that §23.98(f)(10) was unclear. SWBT said it interpreted this section to mean that the telecommunications provider will maintain the ability of a 311 caller to block the Caller ID information. SWBT said if this is not the intent, it wanted clarification. SWBT stated that if information on a 311 call is blocked, then the ANI/ALI information will not be passed on, if necessary.

For §23.98(f)(10), ACSEC wanted to reflect the legal and technical differences in Caller ID type service, ANI and ALI. ACSEC suggested 311 calls be subject to Calling Line Identification (CLID) which is blockable, instead of true ANI that is not subject to call blocking. ACSEC stated that the CLID number could still be used to query the ALI database by a Public Safety Answering Point (PSAP) in a true emergency. ACSEC stated that the references to ALI and ANI may be misinterpreted to mean that the commission is approving the "general" use of ANI and ALI by CTUs for all 311 calls instead of Caller ID services. ACSEC proposed modifications to the language to clarify the commission's intent on the use of Caller ID services.

For §23.98(f)(10), Austin proposed, in its reply comments, the following language: "When a certified telecommunications utility or a 311 system uses Caller Identification (Caller ID) Services or other equivalent feature for the provision of 311 service, applicable customer privacy protection and call-blocking requirements shall apply; however, in governmental entities in which the governing body has restricted use of the 311 system to public safety purposes (law enforcement, emergency medical response, and fire), the customer privacy protections and call-blocking requirements applicable to 911 calls shall also apply to 311 calls made for such public safety purposes, to the extent such protections and requirements are technologically available." Austin argued that the proposed language is better because it clarifies any confusion as to whether a non-urgent 311 call for law enforcement, emergency medical or fire fighter responses qualify as an "emergency." Austin stated it hoped to establish a 311 system solely for non-urgent public safety calls and for this reason wished to offer Austinites a 311 service that is a subset of the current 911 system. Austin argued that if a 311 call became an "emergency" during the course of the call, the public safety agency would need to quickly obtain the caller's address in order to respond appropriately. Austin believed that current technology can not override a blocked call for 311 calls. Austin urged nonetheless that the proposed rule

should not foreclose the possibility of using such technology when and if it becomes available.

For increased clarity of purpose, the commission has rewritten this subsection to show that the subsection is designed to preserve the privacy of users of 311. AT&T is correct in noting that it is inappropriate to mandate use of a seven-digit number for anonymity due to number conservation and portability efforts. But instead of mandating a ten-digit number as AT&T suggested, the commission is requiring certificated telecommunication utilities to use a "non-abbreviated phone number" to preserve anonymity. Consequently, the commission refuses to follow AT&T's suggestion about a ten-digit number. The differences in ALI, ANI and Caller ID drove the way the commission drafted this subsection. To further highlight those differences, the commission inserts the word "non-blockable" into this subsection to differentiate when an alternative phone number is required. The commission has determined that only when a 311 caller's identity cannot remain anonymous due to the employed technology must a non-abbreviated phone number also be employed. The commission has addressed the issue of privacy as related to a 311 call by allowing the option of dialing a standard non-abbreviated number which permits a calling party to prevent receipt of its number identification. This will not address the user's privacy if the call is made from a pay telephone or from a line which has not elected blocking of its calling information. In those instances where a ten digit number will be required, it was not the commission's intention to prevent use of the ten digit number to achieve the caller's privacy. The commission also accepts part of ACSEC's modification and states that the amendment language should not be construed as a blanket approval of using ANI and ALI for 311 calls. The commission rejects Austin's proposed modification.

The commission adds the following language to the end of the parenthetical clause in §23.98(f)(12)(B), "...and their potential frequency of access to the governmental agencies wishing to use the 311 service)."

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, §52.001, which requires that the commission to formulate and apply rules to protect the public interest due to federal administrative actions.

Cross Index to Statutes: Public Utility Regulatory Act §14.002, §14.052, and §52.001.

§23.98. *Abbreviated Dialing Codes.*

(a) The following abbreviated dialing codes may be used in Texas:

- (1) 311 - Non-Emergency Governmental Service;
- (2) 411 -
  - (A) Directory Assistance; and
  - (B) Directory Assistance Call Completion.
- (3) 611 - Repair Service;

- (4) 711 - Telecommunications Relay Service;
- (5) 811 - Business Office; and
- (6) 911 - Emergency Service.

(b) The following N11 dialing codes are not assigned for use in Texas:

- (1) 211; and
- (2) 511.

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

(e) The following limitations apply to a CTU's use of N11 dialing codes for internal business and testing purposes:

(1) use may not interfere with the assignment of such numbers by the FCC and the North American Numbering Plan (NANP); and

(2) (No change.)

(f) 311 Service.

(1) **Scope and Purpose.** This subsection applies to the assignment, provision, and termination of 311 service. Through this subsection, the commission strives to strengthen the 911 system by alleviating congestion on the 911 system through the establishment of a framework for governmental entities to implement a 311 system for non-emergency police and other governmental services.

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

(A) **Certificated telecommunications utility** - The meaning assigned by §23.3 of this title (relating to Definitions).

(B) **Governmental entity** - Any county, municipality, emergency communication district, regional planning commission, appraisal district, or any other subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 911, or other emergency service as defined in Tex. Health & Safety Code §771.001, as may be subsequently amended.

(C) **911 system** - A system of processing emergency 911 calls, as defined in Tex. Health & Safety Code §772.001, as may be subsequently amended.

(D) **Selective routing** - The feature provided with 311 service by which 311 calls are automatically routed to the 311 answering point for serving the place from which the call originates.

(E) **311 answering point** - A communications facility that:

(i) is operated, at a minimum, during normal business hours;

(ii) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(iii) is the first point of reception by a governmental entity of a 311 call; and

(iv) serves the jurisdictions in which it is located or other participating jurisdictions.

(F) **311 service** - A telecommunications service provided by a certificated telecommunications provider through which

the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(G) **311 service request** - A written request from a governmental entity to a certificated telecommunications utility requesting the provision of 311 Service. A 311 service request must:

(i) be in writing;

(ii) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 Service;

(iii) contain an outline from the governmental entity for implementation of 311 service;

(iv) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and

(v) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(H) **311 system** - A system of processing 311 calls.

(3) A certificated telecommunications utility must have a commission-approved application to provide 311 service.

(4) Requirements of application by certificated telecommunications utility.

(A) Applications, tariffs, and notices filed under this subsection shall be written in plain language, shall contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice of the filing, and shall conform to the requirements of §23.26 of this title (relating to New & Experimental Services) or §23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), whichever is applicable.

(B) A copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service.

(C) No application for 311 service allowing the governmental entity to charge its citizens a fee on a per-call or per-use basis for using the 311 system shall be approved.

(D) All applications for 311 service shall include the governmental entity's plan to educate its populace about the use of 311 at the inception of 311 service and its plan to educate its populace at the termination of the governmental entity's provision of 311 service.

(5) **Notice.** The presiding officer shall determine the appropriate level of notice to be provided and may require additional notice to the public.

(A) The certificated telecommunications utility shall file with the commission a copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service. This copy of the proposed notice shall be filed with the commission not later than 10 days after the certificated telecommunications utility receives the 311 service request; and

(B) The proposed notice shall include the identity of the governmental entity, the geographic area to be affected if the new 311 service is approved, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, 30 days after notice is published in the *Texas Register*). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(6) A certificated telecommunications utility may provide 311 service only to governmental entities.

(7) A 311 service request shall start the six-month deadline to "take any necessary steps to complete 311 calls" as required by the Federal Communications Commission's Order *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997).

(8) 311 calls shall not be completed over the 911 network or use the 911 database.

(9) The 311 network shall not be used for commercial advertisements.

(10) To preserve the privacy of callers who wish to use the governmental entity's non-emergency service anonymously, a certificated telecommunications utility which uses Automatic Number Identification (ANI) service, Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering feature for the provision of 311 service must establish a non-abbreviated phone number that will access the same non-emergency police and governmental services as the 311 service while honoring callers' call-and-line-blocking preference. When publicizing the availability of the 311 service, the governmental entity must inform the public if its 311 service has caller or number identification features, and must publicize the availability of the non-abbreviated phone number that offers the same service with caller anonymity. When a certificated telecommunications utility uses Caller Identification (Caller ID) services or other equivalent feature to provide 311 service, relevant provisions of the commission's substantive rules and of the Public Utility Regulatory Act apply.

(11) The commission shall have the authority to limit the use of 311 abbreviated dialing codes to applications that are found to be in the public interest.

(12) The commission shall have the authority to decide which governmental entity shall provide 311 service when there are conflicting requests for concurrent 311 service for the same geographic area, to the extent that negotiations between or among the affected governmental entities fail. The commission shall consider the following factors in determining conflicting requests for 311 service:

(A) the nature of the service(s), including but not limited to the proposed public education portion, to be provided by the governmental entity; and

(B) the potential magnitude of use of the requested 311 service (i.e., the number of residents served by the governmental entity and their potential frequency of access to the governmental agencies wishing to use the 311 service).

(13) When termination of 311 service is desired, the certificated telecommunications utility shall file a notice of termination with the commission that contains:

(A) proposed notice to the affected area of the termination of 311 service; and

(B) the program to educate the affected public of the termination of 311 service.

(14) The commission, after receiving the certificated telecommunications utility's proposed notice of termination of 311 service and approving the proposed notice through an administrative review, will cause the approved notice to be published in the *Texas Register*.

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 16, 1998.

TRD-9811246

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: August 5, 1998

Proposal publication date: January 30, 1998

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



## Part IX. Texas Lottery Commission

### Chapter 401. Administration of State Lottery Act

#### 16 TAC §401.369

The Texas Lottery Commission adopts an amendment to section 16 TAC §401.369, concerning retailer sales incentive, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3977).

The amendment is intended to allow a lottery retailer who has undergone a business reorganization but retained 100% of the principals in the business to be eligible for the reduction of the on-line service charge from \$20 to \$10. Under the State Lottery Act, there is no authority to transfer a license. A lottery retailer who undergoes a business reorganization to the extent that a new entity is created must apply for a new lottery sales agent's license. Under the rule as currently written, the new licensee, regardless of whether 100% of the principals remain the same, would be required to pay an on-line service charge of \$20. The Commission, in adopting new rule 16 TAC §401.369, intended to recognize that a licensee who has a history of good standing with the agency did not pose a credit risk to the agency. This amendment continues the agency's intention by expressly providing that in the event of a new license being issued because of a business reorganization which retained 100% of the principals, the new licensee would be eligible for the reduction in the on-line fee charge. However, pursuant to the provisions of the State Lottery Act, a separate license is required for each location at which tickets are sold and a person who desires to operate more than one location to sell tickets must submit a separate application for each location. Consistent with the provisions of the State Lottery Act, this rule and its amendments thereto are intended to ensure that each licensed location has its own history of good standing.

The amendment allows a lottery retailer who has undergone a business reorganization to the extent a new license is required but has retained 100% of the principals in the business to be

eligible for the reduction of the on-line service charge from \$20 to \$10.

The following interested groups or associations presented either written comments and/or oral comments: the Texas Association of Lottery Retailers, M.S. Management Corporation, and Cliff's Check Cashing.

The following is a summary of the comments received. Following each comment is the Commission's response.

Comment: Two of the commenters believe the amendment to the rule should be applied retroactively. One of these commenters bases its opinion on the assertion that its business was reorganized "at the suggestion of the administrative department of the Texas Lottery" and, due to this reorganization, the company will not enjoy the benefit of a reduction in its weekly on-line service charge. Another commenter also recently reorganized its business under a different ownership type and, while not alleging the business reorganization was done at the suggestion of the Lottery Commission, feels the rule should be applied retroactively to all retailers with "outstanding records" like theirs.

Response: Applying the amended rule retroactively would have a negative impact on revenue to the State and, due to the large number of applications processed in the Licensing section of the Commission, the high volume of "change-of-ownership" transactions that take place in the retailer community, and the limitations of Commission resources, the Commission does not have the ability to retroactively research all previous retailer "change-of-ownership" transactions to determine if they fit within the "100% of the principals retained" criteria. Further, the Commission believes the effective date of the rule amendment provides a bright line for implementation. No change was made as a result of this comment.

Comment: One commenter believes the amendment to the rule should be applied to new locations licensed under an entity owning existing locations that qualify for the reduced on-line service charge.

Response: According to Texas Government Code §401.151(d), a separate license is required for each location at which lottery tickets are to be sold. Applicant information submitted for each location is considered on its own merit. Each additional location licensed under the same ownership structure is considered unique and is evaluated separately, including the issue date of the license. No change was made as a result of this comment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811072

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: August 2, 1998

Proposal publication date: April 24, 1998

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

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## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 33. Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund

##### **19 TAC §§33.5, 33.10, 33.20, 33.25, 33.30, 33.40, 33.55, 33.60**

The Texas Education Agency (TEA) adopts amendments to §§33.5, 33.10, 33.20, 33.25, 33.30, 33.40, 33.55, and 33.60, concerning the Texas Permanent School Fund (PSF). Section 33.20 is being adopted with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5549). Sections 33.5, 33.10, 33.25, 33.30, 33.40, 33.55, and 33.60 are being adopted without changes to the proposed text. The sections establish investment objectives, policies, and guidelines for the PSF. Section 33.60(3) provides for the annual review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas PSF, to determine if changes are necessary or desirable.

The amendments relieve the TEA of the requirement to inform investment managers and consultants of Texas laws, narrow the focus of legal governance of the PSF to the Texas Constitution, and clarify the role of the TEA Internal Audit Division in the annual review of the PSF. The amendments also clarify the State Board of Education's (SBOE) duty in contracting with investment services providers, clarify the circumstances under which external investment managers will be responsible for failed trades attributable to broker error, and modify investment manager reporting responsibilities.

The following changes have been made to the rules since they were published as proposed.

In §33.20(e)(4), the phrase "approving all contracts and selection of" has been changed to read "approving the selection of, and all contracts with". A similar change was also made to §33.20(e)(5). These changes were made to improve clarity of language.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Education Code, §7.102(c)(31), which authorizes the State Board of Education to invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and the Texas Education Code, Chapter 43.

##### *§33.20. Responsible Parties and Their Duties.*

(a) The Texas Constitution, Article VII, §§1-8, establishes the Available School Fund, the Texas Permanent School Fund (PSF), and the State Board of Education (SBOE), and specifies the standard of care SBOE members must exercise in managing PSF assets. In addition, the constitution directs the legislature to establish suitable provisions for supporting and maintaining an efficient public free school system, defines the composition of the PSF and the Available School Fund, and requires the SBOE to set aside sufficient funds to

provide free textbooks for the use of children attending the public free schools of this state.

(b) The SBOE shall be responsible for overseeing all aspects of the PSF and may employ any of the following parties, whose duties and responsibilities are as follows.

(1) An investment manager is a person, firm, corporation, bank, or insurance company the SBOE retains to manage a portion of the PSF assets under specified guidelines.

(2) A custodian is an organization, normally a bank, the SBOE retains to safekeep, and provide accurate and timely reports of, PSF assets.

(3) A consultant is a person or firm the SBOE retains to advise the PSF based on professional expertise.

(4) Investment counsel is a person or firm retained under criteria specified in the PSF Investment Procedures Manual to advise PSF investment staff and the SBOE Committee on School Finance/Permanent School Fund within the policy framework established by the SBOE. Counsel may advise PSF internal managers regarding various issues, including: selecting companies in different industries; specific stock or corporate bond issues or other investment instruments; and timing of purchases and sales. Counsel advises on the economic and market environment and asset allocation and provides PSF investment staff direction on diversifying investments between asset classes and among respective industries.

(5) A performance measurement consultant is a person or firm retained to provide the SBOE Committee on School Finance/Permanent School Fund an analysis of the PSF portfolio performance. The outside portfolio performance measurement service firm shall perform the analysis on a quarterly or as-needed basis. Quarterly reports shall be distributed to each member of the SBOE Committee on School Finance/Permanent School Fund, and a representative of the firm shall be available as necessary to brief the committee.

(6) The State Auditor's Office is an independent state agency that performs an annual financial audit of the TEA at the direction of the Texas Legislature. The financial audit, conducted according to generally accepted auditing standards, is designed to test compliance with generally accepted accounting principles. The state auditor performs tests of the transactions of the PSF Investment Office as part of this annual audit, including compliance with governing statutes and SBOE policies and directives. The TEA Internal Audit Division will participate in the audit process by participating in entrance and exit conferences, being provided copies of all reports and management letters furnished by the external auditor, and having access to the external auditor's audit programs and working papers.

(7) The SBOE may retain independent external auditors to review the PSF accounts annually or on an as-needed basis. The TEA Internal Audit Division will participate in the audit process by participating in entrance and exit conferences, being provided copies of all reports and management letters furnished by the external auditor, and having access to the external auditor's audit programs and working papers.

(c) The SBOE shall meet on a regular or as-needed basis to conduct the affairs of the PSF.

(d) In case of emergency or urgent public necessity, the SBOE Committee on School Finance/Permanent School Fund or the SBOE, as appropriate, may hold an emergency meeting under the Texas Government Code, §551.045.

(e) The SBOE shall have the following exclusive duties:

(1) determining the strategic asset allocation mix between asset classes based on the attending economic conditions and the PSF goals and objectives;

(2) ratifying the investment transactions pertaining to the purchase, sale, or reinvestment of fixed income, equity, or cash securities by all internal and external managers for the current reporting period;

(3) appointing members to the SBOE Investment Advisory Committee;

(4) approving the selection of, and all contracts with, external professional investment managers, financial advisors, financial consultants, or other external professionals employed to help the SBOE invest the PSF;

(5) approving the selection of, and the performance measurement contract with, a well-recognized and reputable firm employed to evaluate and analyze PSF investment results. The service shall compare investment results to the written investment objectives of the SBOE and also compare the investment of the PSF with the investment of other public and private funds against market indices and by managerial style;

(6) setting policies, objectives, and guidelines for investing PSF assets; and

(7) representing the PSF to the state.

(f) The SBOE may establish committees to administer the affairs of the PSF. The duties and responsibilities of any committee established shall be specified in the PSF Investment Procedures Manual.

(g) The PSF shall have an executive administrator, with a staff to be adjusted as necessary, who functions directly with the SBOE through the SBOE Committee on School Finance/Permanent School Fund concerning investment matters, and who functions as part of the internal operation under the commissioner of education. At all times, the PSF executive administrator and staff shall invest PSF assets as directed by the SBOE according to the Texas Constitution and all other applicable Texas statutes, as amended, and SBOE rules governing the operation of the PSF. The PSF staff shall:

(1) administer the PSF according to SBOE goals and objectives;

(2) execute all directives, policies, and procedures from the SBOE and the SBOE Committee on School Finance/Permanent School Fund;

(3) keep records and provide a continuous and accurate accounting of all PSF transactions, revenues, and expenses and provide reports on the status of the PSF portfolio;

(4) advise any officials, investment firms, or other interested parties about the powers, limitations, and prohibitions regarding PSF investments that have been placed on the SBOE or PSF investment staff by statutes, attorney general opinions and court decisions, or by SBOE policies and operating procedures;

(5) continuously research all internally managed securities held by the PSF and report to the SBOE Committee on School Finance/Permanent School Fund and the SBOE any information requested, including reports and statistics on the PSF, for the purpose of administering the PSF;

(6) establish and maintain a procedures manual that implements this section to be approved by the SBOE;

(7) make recommendations regarding investment and policy matters to the SBOE Committee on School Finance/Permanent School Fund and the SBOE; and

(8) establish and maintain accounting policies and internal control procedures concerning all receipts, disbursements and investments of the PSF, according to the procedures adopted by the SBOE.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 61. School Districts

### Subchapter AA. Commissioner's Rules

#### Division 2. School Finance

##### **19 TAC §61.1011**

The Texas Education Agency (TEA) adopts new §61.1011, concerning Public Education Grant (PEG) supplemental payments, without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (22TexReg 5916).

The Texas Education Code (TEC), §29.203(b), as added by House Bill 318, 75th Texas Legislature, 1997, directs the commissioner to establish rules for the calculation of additional state aid for certain school districts that educate students under the PEG program.

The PEG program was created by Senate Bill 1, 74th Texas Legislature, 1995, and allows students assigned to certain campuses to attend school in a district other than that of the student's residence. Originally, students were eligible if they were assigned to a campus that had been rated *low-performing* in any three of the preceding years, or if they were assigned to a campus that, in all three previous years, had at least 50 percent of the students not performing satisfactorily on state assessment instruments.

House Bill 318, 75th Texas Legislature, 1997, amended the eligibility criteria by allowing students to attend school in another district if they were assigned to a campus that had been rated *low-performing* in any of the three preceding years, or if they were assigned to a campus that, in two of the three previous years, had at least 50 percent of the students not performing satisfactorily on state assessment instruments. House Bill 318, 75th Texas Legislature, 1997, also simplified the funding mechanism by creating an entitlement to the district educating a student under the PEG program equal to the adjusted basic allotment multiplied by a weight of 0.1.

However, for certain school districts, this new funding mechanism will not generate the same amount of state assistance that it would for most school districts. House Bill 318, 75th Texas

Legislature, 1997, authorizes additional state assistance for districts whose wealth per student is greater than the guaranteed wealth level (currently \$210,000 per student) but less than the equalized wealth level (currently \$280,000 per student). Districts with property wealth in this range are ineligible for state assistance under the guaranteed yield program (Tier 2).

No changes were made to the rule since it was published as proposed.

No public comments were received regarding the adoption of the new section.

The new section is adopted under Texas Education Code, §29.203(b), as added by House Bill 318, 75th Texas Legislature, 1997, which authorizes the commissioner of education to establish rules for the calculation of additional state aid for certain school districts that educate students under the PEG program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 66. State Adoption and Distribution of Instructional Materials

### Subchapter C. Local Operations

##### **19 TAC §66.107**

The Texas Education Agency (TEA) adopts an amendment to §66.107, concerning instructional materials, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5552). The section establishes procedures for school districts and open-enrollment charter schools to conduct an annual physical inventory of currently adopted instructional materials requisitioned by and delivered to districts and open-enrollment charter schools. The adopted amendment would require school districts and open-enrollment charter schools to return surplus textbooks to the state textbook depository for redistribution. The adopted amendment also prohibits districts and open-enrollment charter schools from inflating enrollments and ordering textbooks in excess of the actual needs. Under the adopted amendment, districts and open-enrollment charter schools that inflate enrollments and order textbooks in excess of the actual needs will purchase the excess textbooks from the state.

Local school districts and open-enrollment charter schools are responsible for selecting and submitting requisitions for instructional materials. Currently, there are no rules in place that address the issue of textbook orders based on reported enrollment that exceeds actual enrollment. The adopted amendment provides a means for the state to require districts and open-enrollment charter schools to return surplus textbooks in

a timely manner. Failure to return surplus textbooks increases textbook expenditures for the state by denying the opportunity for redistribution from the state textbook depository. New textbooks are purchased instead.

Since the amendment was proposed, changes to fiscal impact estimates have been calculated. Total savings for the state are estimated to be \$15 million in fiscal year 1999 and \$10 million in fiscal years 2000 through 2002. These estimates will be the result requiring more stringent ordering processes on the part of school districts and by implementing a return policy for surplus textbooks that can be redistributed by the state. School districts that were not subject to a membership audit returned approximately \$15 million worth of surplus materials this year. This can be compared to the \$5 million worth of materials returned last year, prior to districts' knowledge of the adopted amendment to rule.

No changes were made to the rule since it was published as proposed.

The following comments were received regarding adoption of this amendment.

**Comment.** An officer of TCAT commented that the agency should notify all school districts when materials become surplus.

**Agency Response.** The agency provides inventory reports to the school districts twice a year. These reports list each textbook title that was purchased for the district by the state. Within the next year, districts will be able to access their current inventories online. Districts maintain enrollment counts throughout the school year. By comparing the district's inventory and enrollments, districts should be able to determine which materials are surplus. In addition, the agency has no data to verify enrollments throughout the school year without asking schools to submit class rosters each time they order textbooks. Most districts feel that this requirement would place a hardship on the schools.

**Comment.** A superintendent commented that the amendment will increase costs at the local district level. Districts will have to develop new computer programs to provide enrollment data and documentation.

**Agency Response.** Districts currently update enrollments throughout the school year when additional textbooks are needed. It is assumed that most districts already use computer-generated reports from their enrollment databases.

**Comment.** A superintendent commented that the estimate of \$750,000 in surplus textbooks from 101 small school districts equates to only 10 textbooks per subject per district.

**Agency Response.** The agency recognizes that the results of the audits of 101 school districts may appear to be insignificant and that the sample used in the audits represents only 10 percent of school districts in Texas. If the same 10 textbook per district surplus argument is employed for projection purposes across the state, however, the problem becomes a 10,000 textbook surplus that represents approximately \$7.5 million. The adopted amendment would address school districts that are not using surplus textbooks and withhold them from state use by not returning them. The agency also recognizes that not all school districts have intentional surpluses; school districts will never be asked to return textbooks that are used for instruction.

**Comment.** A superintendent commented that the TEA seems to believe that PEIMS fall snapshot data can provide enrollment data for ordering textbooks.

**Agency Response.** The agency eliminated the *Annual Membership Report* form in 1996 because districts were required to submit data that were often duplicated. Data submitted in the PEIMS database are used for the April textbook order unless districts report that the PEIMS data are inaccurate or not appropriate. Districts are given every opportunity to update their enrollments as needed throughout the school year.

**Comment.** TEC, §31.103, outlines how textbooks are ordered based on a district's maximum enrollment plus ten percent. PEIMS data are not a factor according to the law.

**Agency Response.** TEC, §31.103, requires districts to report maximum attendance to the commissioner of education by April 25. Attendance is not the same as enrollment. TEC, §31.103, states that requisitions for textbooks for the following year are based on maximum attendance reports plus an additional 10 percent. The law does not provide that the additional 10 percent be given throughout the next school year. Current agency procedures allow districts an additional 10 percent for growth throughout the school year.

**Comment.** A superintendent commented that the use of PEIMS data does not reflect the district's textbook needs throughout the school year.

**Agency Response.** PEIMS data are used only for the April textbook orders for the following school year. Districts may update their enrollments throughout the school year when additional textbooks are needed.

**Comment.** A superintendent commented that there is cause for concern with the TEA definition of "a timely manner." The district cannot return surplus materials prior to the middle of October in a given year.

**Agency Response.** Districts are currently requested to return surplus textbooks each year between October 1 and December 15. Membership audits will be conducted in January and February. If the district has inadvertently ordered more textbooks than it needed for that school year, ample time for the return of those materials is provided. The majority of surplus textbooks found in last year's audits had been in the districts for several years.

The amendment is adopted under the Texas Education Code, §31.003, which authorizes the State Board of Education to adopt rules, consistent with the Texas Education Code, Chapter 31, for the adoption, requisition, distribution, care, use, and disposal of textbooks; and Texas Education Code, §31.103, which specifies the provisions for textbook requisitions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 97. Planning and Accreditation

### Subchapter BB. Memoranda of Understanding

#### 19 TAC §97.1011, §97.1012

The Texas Education Agency (TEA) adopts new §97.1011 and §97.1012, concerning memoranda of understanding, without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5917). Section 97.1011 provides for a memorandum of understanding (MOU) with the Texas School for the Deaf related to accreditation and Public Education Information Management System (PEIMS) data reporting, authorized under Texas Education Code (TEC), §29.315, as added by Senate Bill 1918, 75th Texas Legislature, 1997. Section 97.1012 provides for a memorandum of understanding with the Texas School for the Blind and Visually Impaired related to PEIMS data reporting, authorized under TEC, §30.005, as added by Senate Bill 1919, 75th Texas Legislature, 1997.

Adopted new 19 TAC §97.1011 establishes the method for developing and reevaluating a set of quality of learning indicators at the Texas School for the Deaf and the process for the TEA to conduct and report on an annual evaluation of the school's performance on the indicators. The new section also provides for the school's board to publish, discuss, and disseminate an annual report describing the educational performance of the school; the process for the TEA to assign an accreditation status to the school, to reevaluate the status on an annual basis, and, if necessary, to make on-site accreditation investigations; and the type of information the school shall be required to provide through PEIMS. TEA staff held a series of meetings with representatives from the Texas School for the Deaf to draft and refine language in the MOU.

Adopted new 19 TAC §97.1012 establishes the method for developing and reevaluating a set of quality of learning indicators at the Texas School for the Blind and Visually Impaired. The new section also provides for the process for the TEA to conduct and report on an annual evaluation of the school's performance on the indicators; the requirements for the school's board to publish, discuss, and disseminate an annual report describing the educational performance of the school; and the type of information the school shall be required to provide through PEIMS. TEA staff held a series of meetings with representatives from the Texas School for the Blind and Visually Impaired to draft and refine language in the MOU.

No comments were received regarding the adoption of the new sections.

The new sections are adopted under the Texas Education Code, §29.315, as added by Senate Bill 1918, 75th Texas Legislature, 1997, which authorizes the commissioner of education to adopt by rule a memorandum of understanding jointly developed and agreed upon by the Texas Education Agency and the Texas School for the Deaf; and Texas Education Code, §30.005, as added by Senate Bill 1919, 75th Texas Legislature, 1997, which authorizes the commissioner of education to adopt by rule a memorandum of understanding jointly developed and agreed upon by the Texas Education Agency and the Texas School for the Blind and Visually Impaired.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 109. Budgeting, Accounting, and Auditing

### Subchapter B. Texas Education Agency Audit Functions

#### 19 TAC §109.25

The Texas Education Agency (TEA) adopts new §109.25, concerning the reporting and auditing system for the state compensatory education program, with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5553). The new section provides for a reporting and auditing system for district and campus expenditures of compensatory education funds that are distributed under the Foundation School Program.

Senate Bill 1873, 75th Texas Legislature, 1997, amended Texas Education Code (TEC), §42.152, in relation to direct costs attributed to the state compensatory education allotment. The bill requires the design and implementation of a reporting and auditing system that ensures monitoring of school districts for appropriate use of compensatory education allotment funds. Appropriate use of compensatory education allotment funds has been defined as expenditures for instructional programs that improve or enhance the regular educational program and that are supplementary to the regular education program. According to the statutes, the State Board of Education is to be assisted by the Office of the State Auditor and Comptroller of Public Accounts in the design and implementation of the reporting and auditing system.

The TEA is also adopting an amendment to 19 TAC §109.41, which is filed in a separate submission. Section 109.41 adopts by reference the "Financial Accountability System Resource Guide." The adopted amendment to the "Resource Guide" includes changes in financial accounting rules relating to the state compensatory education program. These changes are reflected in new modules one and nine of the "Resource Guide." Adopted new module nine of the "Resource Guide" describes the reporting and auditing system required by Senate Bill 1873.

The effective date for adopted new 19 TAC §109.25 is September 1, 1998. Implementation during Fiscal Year 1999 will be on a hold-harmless basis, providing a transitional year for implementing the new financial accounting requirements for the state compensatory education allotment.

The following change has been made to the new section since published as proposed.

Language has been changed in §109.25(f)(2) to clarify what action will be taken when a school district responds with an appropriate corrective action plan.



No comments were received regarding the adoption of the new section.

The new section is adopted under the Texas Education Code, §42.152, as amended by Senate Bill 1873, 75th Texas Legislature, 1997, which authorizes the State Board of Education to develop and implement by rule a reporting and auditing system for district and campus expenditures of compensatory education funds to ensure that compensatory education funds, other than the indirect cost allotment, are spent only to supplement the regular program.

§109.25. *State Compensatory Education Program Reporting and Auditing System.*

(a) Each school district shall report financial information relating to expenditure of the state compensatory education allotment under the Foundation School Program to the Texas Education Agency (TEA). Each district shall report the information according to standards for financial accounting provided in §109.41 of this title (relating to Financial Accountability System Resource Guide.) The financial data will be reported annually through the Public Education Information Management System. The commissioner of education shall ensure that districts follow guidelines contained in the "Financial Accountability System Resource Guide" in attributing supplemental direct costs to state compensatory education and accelerated instruction programs and services. Costs charged to state compensatory education shall be for programs and services that enhance and improve the regular education program.

(b) Each district shall ensure that supplemental direct costs and personnel attributed to compensatory education and accelerated instruction are identified in district and/or campus improvement plans at the summary level for financial units or campuses. Each district shall maintain documentation that supports the attribution of supplemental costs and personnel to compensatory education. Districts must also maintain sufficient documentation supporting the appropriate identification of students in at-risk situations, under criteria established in Texas Education Code (TEC), §29.081.

(c) The TEA shall conduct risk assessment and desk audit processes to identify the districts or campuses most at risk of inappropriate allocation and/or underexpenditure of the compensatory education allotment. In the risk assessment and desk audit processes, the TEA shall consider the following factors:

- (1) aggregate performance of students in at-risk situations on the state assessment instruments that is below the standards for the "acceptable" rating, as defined in the state accountability system;
- (2) the financial management of compensatory education funds; and/or
- (3) the quality of data related to compensatory education submitted by a district.

(d) The TEA shall use the results of risk assessment and desk audit processes to prioritize districts for the purpose of on-site visits and may conduct on-site visits.

(e) The TEA shall issue a preliminary report resulting from a desk audit or an on-site visit before submitting a final report to the district. After issuance of a preliminary report, a district must file with the TEA the following:

- (1) a response to the preliminary report within 20 calendar days from the date of the preliminary report outlining steps the district will take to resolve the issues identified in the preliminary report; and

(2) a corrective action plan within 60 calendar days from the date of the preliminary report if the district's response to the preliminary report does not resolve issues identified in the preliminary report.

(f) The TEA shall issue a final report that indicates whether the district has resolved the findings in the preliminary report and whether the corrective action plan filed under subsection (e)(2) of this section is adequate.

(1) If the final report contains a finding of noncompliance with TEC, §42.152(c), the report shall include a financial penalty authorized under TEC, §42.152(q).

(2) If the district responds with an appropriate corrective action plan, the TEA shall rescind the financial penalty and release the amount of the penalty to the school district.

(g) The TEA may conduct an on-site visit to verify the implementation of a district's corrective action plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter C. Adoptions by Reference

### 19 TAC §109.41

The Texas Education Agency (TEA) adopts an amendment to §109.41, concerning the "Financial Accountability System Resource Guide," without changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3791). The section adopts by reference the "Financial Accountability System Resource Guide" as the TEA's official rule. The "Resource Guide" describes rules for financial accounting such as financial reporting; budgeting; purchasing; auditing; site-based decision making; data collection and reporting; and management. Public school districts use the "Resource Guide" to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code and other state statutes relating to public school finance. The "Resource Guide" is available at [www.tea.state.tx.us/school.finance](http://www.tea.state.tx.us/school.finance) on the TEA website.

The adopted amendment to §109.41 changes the date from "January 1998" to "September 1998" to reflect the effective date of the adopted amendments to the "Financial Accountability System Resource Guide." Under §109.41(b), the commissioner of education shall amend the "Financial Accountability System Resource Guide," adopting it by reference, as needed. Adopted amendments to the "Resource Guide" include changes in financial accounting rules relating to the state compensatory education program. These changes will be reflected in adopted new module nine of the "Resource Guide." Module one of the "Resource Guide" also contains amendments that include applicable text from adopted new module nine. New module

nine describes an auditing system that involves risk assessment and desk audit processes. New module nine of the "Resource Guide" also provides guidelines to school districts regarding the use of the compensatory education allotment to supplement the regular education program. The effective date for adopted new module nine of the "Resource Guide" is the fiscal year beginning September 1, 1998. Implementation during the first fiscal year will be on a hold-harmless basis, providing a transitional year for implementing the new financial accounting requirements for the state compensatory education allotment.

On July 10, 1998, the State Board of Education approved new 19 TAC §109.25, State Compensatory Education Program Reporting and Auditing System, for adoption. New 19 TAC §109.25 provides for systems that monitor appropriate use of state compensatory education allotment funds by school districts. New §109.25 is filed in a separate submission.

House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, establishes a four-year sunset review cycle for all state agency rules. The TEA is also conducting a review of 19 TAC Chapter 109, Subchapter C, Adoptions By Reference, in accordance with Rider 167. The TEA does find sufficient reason for the rule to continue to exist and amends the rule as indicated.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Education Code, §§7.102(b)(33), 42.152, 44.007, and 44.008, which authorizes the State Board of Education to adopt rules relating to school district budgets and audits of school district fiscal accounts, and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 157. Hearings and Appeals

### Subchapter D. Independent Hearing Examiners

#### 19 TAC §157.41

The Texas Education Agency (TEA) adopts an amendment to §157.41, concerning certification criteria for independent hearing examiners, with changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5554). The section establishes the certification criteria for independent hearing examiners. The adopted amendment to 19 TAC §157.41(f) specifies that three of the 10 hours of continuing legal education credit for certified hearing examiners, who preside over employment due process hearings at the district level, be in school law and the other seven hours

be in civil trial advocacy. The adopted amendment to 19 TAC §157.41(k) allows the commissioner of education, upon application for recertification, to consider a complaint by an attorney who participated in a hearing that a hearing examiner did not conduct his or her duties in a competent manner. The commissioner would consider, but not be limited to, three factors relating to the conduct of the examiner: timeliness, accuracy and appropriateness of procedural and evidentiary rulings; and decorum or control.

Based on public comments, the following changes have been made to the rule since published as proposed.

In §157.41(k)(1), language was added that specifies certification as a hearing examiner is effective on a yearly basis only and does not confer any expectation of recertification in subsequent years.

Language was added to §157.41(k)(2) to provide an opportunity for a certified hearing examiner to respond to a complaint.

Language specifying that the decision of the commissioner is final and unappealable was added to §157.41(k)(3).

The following public comments have been received regarding adoption of the amendment.

**Comment.** On behalf of 15 independent hearing examiners, an individual submitted written comments requesting specific procedures regarding the complaint process to be included in the recertification provisions of 19 TAC §157.41(k).

**Agency Response.** In response to this comment, a provision was inserted in 19 TAC §157.41(k)(2) specifically permitting a response from the certified hearing examiner. Overall, the specificity of the procedures suggested by the individual would deny the agency flexibility in considering the complaint and the response in a timely, legally appropriate manner. Therefore, no further changes were made.

**Comment.** The State Office of Administrative Hearings (SOAH) suggested more specificity in delineating which types of civil trial advocacy courses would meet the requirement in 19 TAC §157.41(f).

**Agency Response.** The agency disagrees with this comment. No change was made as the current language allows for flexibility in continuing legal education course work.

**Comment.** SOAH observed that the current rule could limit the commissioner's ability to deny certification except when an attorney files a written complaint.

**Agency Response.** The agency agrees with this comment. The provision regarding the lack of an expectation of recertification was added to 19 TAC §157.41(k)(1).

**Comment.** SOAH questioned whether a certified hearing examiner would be able to respond to a complaint.

**Agency Response.** The agency agrees with this comment. The provision allowing for a complaint response from the certified hearing examiner was added to 19 TAC §157.41(k)(2).

**Comment.** SOAH suggested that additional language clarifying the factors set forth in 19 TAC §157.41(k) be added.

**Agency Response.** The agency disagrees with this comment. No change was made because the clarifications were redundant of the original rule provisions.

Comment. SOAH suggested that the standard of "accuracy and appropriateness of procedural and evidentiary rulings" is too vague and would encourage spurious complaints from attorneys and further suggests including the appellate review standards from Texas Government Code, Chapter 2001, Administrative Procedures Act.

Agency Response. The agency disagrees with this comment. This change was not made, as the determinations will be based upon an objective review of the record. Further, the working group members indicated a reluctance to file a complaint against a certified hearing examiner except in an instance of gross incompetence.

Comment. SOAH suggested that any appeal rights should be clarified.

Agency Response. The agency agrees with this comment. Language concerning the lack of an appeal from the commissioner's decision was added to 19 TAC §157.41(k)(3).

Comment. An individual representing school districts of varying sizes commented in support of the amendment to the continuing legal education requirement which would specifically require training in civil trial advocacy and the portion of the rule establishing that the commissioner's decision with regard to recertification is final and not appealable.

Comment. An individual representing school districts of varying sizes commented that the commissioner of education be given authority to decline to recertify an examiner without receiving a complaint from a participating attorney.

Agency Response. The agency agrees with this comment and has inserted a provision in §157.41(k)(1) that there is no expectation of recertification.

Comment. An individual representing school districts of varying sizes commented that the phrase "accuracy and appropriateness of procedural and evidentiary rulings" in §157.41(k)(2)(B) was vague.

Agency Response. The agency disagrees with this comment. The review standard of "accuracy and appropriateness of procedural and evidentiary rulings" is based upon an objective review of the record; further, the working group indicated that attorneys would be reluctant to file a complaint except in the case of gross incompetence and that this standard was appropriate.

Comment. The Texas Association of School Administrators filed a written comment supporting the additional changes that were made to §157.41 in response to SOAH's comments.

The amendment is adopted under the Texas Education Code, §21.252, which directs the State Board of Education to establish criteria for the certification of hearing examiners in consultation with the State Office of Administrative Hearings.

§157.41. *Certification Criteria for Independent Hearing Examiners.*

(a) License required. An individual who is certified as an independent hearing examiner, hereafter referred to as a "certified examiner," must be licensed to practice law in the State of Texas.

(b) Representations prohibited. A certified examiner, and the law firm with which the examiner is associated, must not serve as an agent or representative of:

- (1) a school district;
- (2) a teacher in any dispute with a school district; or

(3) an organization of school employees, school administrators, or school boards.

(c) Moral character. A certified examiner must:

(1) possess good moral character; and

(2) not have been convicted, given probation (whether through deferred adjudication or otherwise), or fined for:

(A) a felony;

(B) a crime of moral turpitude; or

(C) a crime that directly relates to the duties of an independent hearing examiner in a public school setting.

(d) Status as a licensed attorney. A certified examiner must:

(1) currently be a member in good standing of the State Bar of Texas;

(2) within the last five years, not have had the examiner's bar license:

(A) reprimanded, either privately or publicly;

(B) suspended, either probated or otherwise; or

(C) revoked;

(3) have been licensed to practice law in the State of Texas or any other state for at least five years prior to application; and

(4) have engaged in the actual practice of law on a full-time basis, as defined by the Texas Board of Legal Specialization, for at least five years.

(e) Experience. During the three years immediately preceding certification, a certified examiner must have devoted a minimum of 50% of the examiner's time practicing law in some combination of the following areas, with a total of at least one-tenth or 10% of the examiner's practice involving substantial responsibility for taking part in a contested evidentiary proceeding convened pursuant to law in which the examiner personally propounded and/or defended against questions put to a witness under oath while serving as an advocate, a hearing officer, or a presiding judicial officer:

(1) civil litigation;

(2) administrative law;

(3) school law; or

(4) labor law.

(f) Continuing education. During each year of certification, a certified hearing examiner must receive credit for ten hours of continuing legal education, with three hours in the area of school law and seven hours in the area of civil trial advocacy, during the period January 1 to December 31 of each year of certification.

(g) Sworn application. In order to be certified as an independent hearing examiner, an applicant must submit a sworn application to the commissioner of education. The application shall contain the following acknowledgments, waivers, and releases.

(1) The applicant agrees to authorize appropriate institutions to furnish relevant documents and information necessary in the investigation of the application, including information regarding grievances maintained by the State Bar of Texas.

(2) If selected as a certified examiner, the applicant has the continuing duty to disclose grievance matters under subsection

(d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as a certified examiner.

(3) If selected as a certified examiner, the applicant has the continuing duty to disclose criminal matters under subsection (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as a certified examiner.

(h) Assurances as to position requirements. In the sworn application, the applicant must:

(1) demonstrate that the applicant currently maintains an office or offices within the State of Texas;

(2) designate the office locations from which the applicant will accept appointments;

(3) demonstrate that the applicant provides telephone messaging and facsimile services during regular business hours;

(4) demonstrate that the applicant possesses a personal computer capable of producing text in the format specified by the commissioner;

(5) agree to attend meetings of independent hearing examiners in Austin, Texas, at the examiner's expense; and

(6) agree to comply with all reporting and procedural requirements established by the commissioner.

(i) Voluntary evaluations. The commissioner may solicit voluntary evaluations from parties to a case regarding their observations of the independent hearings process.

(j) Insufficient examiners in a region. In the event that insufficient numbers of examiners are certified for any geographic region of the state, the commissioner may assign a certified hearing examiner whose office is within reasonable proximity to the school district.

(k) Annual recertification.

(1) Certification expires on December 31 of each calendar year. All examiners seeking recertification shall reapply on a date specified by the commissioner. Certification as a hearing examiner is effective on a yearly basis only and does not confer any expectation of recertification in subsequent years.

(2) Upon written complaint by an attorney who has participated in a hearing and a response from the certified hearing examiner, the commissioner, in his discretion, may decline to recertify a certified hearing examiner, if the commissioner determines that the certified hearing examiner has failed to perform the duties of an examiner in a competent manner. The commissioner may consider, but is not limited to, the following factors:

(A) timeliness;

(B) accuracy and appropriateness of procedural and evidentiary rulings; or

(C) decorum or control.

(3) The commissioner's decision in regard to recertification is final and not appealable.

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 20, 1998.

TRD-9811413

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

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

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**TITLE 22. EXAMINING BOARDS**

**Part XXXVI. Council on Sex Offender Treatment**

**Chapter 810. Council on Sex Offender Treatment**

**Subchapter A. Sex Offender Treatment Provider Registry**

**22 TAC §§810.1–810.9**

The Council on Sex Offender Treatment (council) adopts new §§810.1-810.9, 810.31-810.34, 810.61-810.64, and 810.91-810.92 concerning the registration and regulation of sex offender treatment providers. Sections 810.2 - 810.5, 810.8, 810.9, 810.62-810.64; and 810.92 are adopted with changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4506). Sections 810.1, 810.6, 810.7, 810.31-810.34, 810.61, and 810.91, are adopted without changes, and therefore the sections will not be republished.

The new sections implement Texas Civil Statutes, Article 4413(51) House Bill (HB) 2699, 75th Legislature, 1997, which transferred the administration and enforcement required, to the Texas Department of Health (department) effective September 1, 1997. Section 17 of this bill transfers all funds, property, records, and employees to the department as of September 1, 1997. The rules repealed in 40 Texas Administrative Code (TAC), Chapters 510-513, are hereby adopted as amended in 22 TAC Chapter 810.

Specifically, the sections cover introduction; definitions; registry criteria; registry renewal; fees; application availability; documentation of experience and training; revocation, denial or non-renewal of registration; complaints, disciplinary actions, administrative hearing and judicial review; access to criminal history records; records; destruction of criminal history records; frequency of criminal background checks; introduction to standards of practice; council assertions; assessment and evaluation concerns; issues to be addressed in treatment; code of professional ethics; and code of ethics.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §810.4(1)-(8), catchlines were added at the beginning of each paragraph to clarify subject.

Change: The word "phallometric" was changed to "Phallo-metric" in §810.62(b)(23), (26), (28), (29); 810.64(11); and 810.92(d)(5) and (11).

The following comments were received concerning the proposed sections. Following each comment is the council's response and any resulting changes.

Comment: A commenter stated that they were in support of the rules as proposed and urged increased monitoring of sex offender treatment programs, including the mandatory licensing of any individual who provided mental health treatment for sex offenders.

Response: The council acknowledges the concerns of the commenter. No changes were made as a result of the comments. The registration of sex offender treatment providers is voluntary. There is no current statutory authority for the council to regulate all providers; this would require new legislation.

Comment: Regarding §810.2(8)(D), a comment was received stating that the definition of sex offender was too broad when a person "who experiences or evidences a paraphilia disorder" is included. The commenter explained that labeling such a person was unnecessarily onerous and punitive, and that persons with object fetishism and transvestic fetishism were not a threat to others.

Response: The council agrees and disagrees. The language is statutory. The council agrees with the concern and has added language to clarify the definition.

Comment: Regarding §810.3(1)(A), a comment was received suggesting that the term, "licensed psychological associate" had been omitted in error.

Response: The council disagrees. No changes were made to the rules as a result of the comment. The term "licensed psychological associate" was intentionally not included in the list of licensed professionals who qualify to be registered as sex offender treatment providers. The council has determined that the applicant should have a full or unrestricted license in order to qualify as a registered sex offender treatment provider (RSOTP). A psychological associate may register as an associate sex offender treatment provider (ASOTP) under §810.3(2)(A). A psychological associate cannot practice without supervision; thus, an associate should not be eligible for an RSOTP. An associate continues to be eligible for an ASOTP registration.

Comment: A commenter stated that in §§810.3(1)(B)(i) and 810.3(1)(B)(ii), the rule was unclear if RSOTP's were required to have both 1000 hours of clinical experience and 40 hours of documented continuing education to qualify for registration.

Response: The council agrees and replaced "or" with "and" in §810.3(1)(B)(i).

Comment: A commenter suggested that the registry criteria in §810.3(1)(B)(ii) be expanded to include sexual assault issues and/or victim training.

Response: The council agrees and added language as a result of the comment.

Comment: A commenter suggested that the language in §810.3(1)(D)(i) be consistent throughout the rules.

Response: The council agrees. Changes were made in §810.3(1)(D)(i) and 810.3(2)(D)(i) changing "a" to "any."

Comment: Comments were received concerning §810.3(1)(D)(i). "This section should be eliminated or revised to avoid an inherent inconsistency. Another section of the rules, §810.61(b), states Sexual deviance is not considered to be a disease that can be cured,' yet §810.3(1)(D)(i) accounts for sufficient evidence of rehabilitation to allow a convicted sexual offender (or one receiving deferred adjudication) to become

an RSOTP. Without unambiguous definition of rehabilitation' this section appears to set a potentially dangerous precedent of allowing sex offenders who cannot be cured to become providers."

Response: The council acknowledges the concern that the appearance of an ambiguity exists. No changes were made to the rules as a result of the comments. The disciplinary process requires careful, cautious, and compassionate consideration of each individual's circumstances. The council believes that the wording as stated allows the council and executive director to require that persons in such a situation demonstrate evidence of rehabilitation.

Comment: Regarding §810.3(1)(F), a comment was received noting that a return had been incorrectly inserted between the word "subparagraph" and (A).

Response: The council agrees and has corrected the typographical error.

Comment: Regarding §810.3(2)(A), a comment was received stating that the list of licensed professionals who qualify to be ASOTPs should include a psychiatrist.

Response: The council agrees and has added the word "psychiatrist".

Comment: Regarding §810.3(2)(A) a comment was received requesting that the list of eligible persons for the ASOTP be expanded to include licensed marriage and family therapist-clinical associate, licensed professional counselor-clinical associate and provisionally licensed psychologist.

Response: The council agrees and has added wording accordingly to include these persons as eligible for ASOTP registration.

Comment: Regarding §810.3(2)(B)(ii), a commenter suggested that this clause be eliminated or clarified, as it was incongruent with §810.3(3)(B).

Response: The council agrees and has added language to §810.3(2)(B)(ii).

Comment: A commenter suggested that the language in §810.3(2)(D)(i) be clarified as to what type of felony conviction should be considered.

Response: The council agrees and added language "in accordance with paragraph (3)(B) of this subsection" and deleted "at least monthly" as a result of the comment.

Comment: A commenter stated that in §810.3(2)(F) the word "license" was missing.

Response: The council agrees and added language "license or certification" as a result of the comment.

Comment: A commenter stated that clarification is needed in §810.3(3)(A) on what type of documentation is required to be provided annually to the council during the renewal period.

Response: The council agrees and has deleted and added language as a result of the comment. The supervising RSOTP and ASOTP will be required to submit a form which will be provided by the council.

Comment: A commenter stated that the language in §810.3(3)(C) is vague regarding the desired format for submitting names of the ASOTP's that RSOTP's have supervised.

Response: The council agrees and has deleted and added language as a result of the comment. The supervising RSOTP and ASOTP will be required to submit a form to the council which will be provided by the council.

Comment: Regarding §§810.3(1)(A) and 810.4, a commenter asked if a registry applicant or a renewal applicant could hold a primary license that was expired, not renewed or in inactive status.

Response: The council clarified that a registry applicant's or renewal applicant's primary license must be current and active. Language was added to §§810.3(1)(A) and 810.4 as a result of the comment.

Comment: A commenter stated that in §810.3(4), it was unclear if a copy of a registration certificate may be displayed at locations where sex offender treatment is provided.

Response: The council agrees and added language listed in §810.3(4)(B) as a result of the comment clarifying that a registrant shall not display a registration certificate which has been reproduced or is expired, suspended, or revoked.

Comment: A commenter stated that §810.3(4) does not state who is the property owner of the registration certificate issued by the council.

Response: The council agrees and added language to §810.3(4)(C) as a result of the comment.

Comment: A commenter inquired as to what would be contained on the registration certificate.

Response: The council clarified by adding language to §810.3(4)(A).

Comment: A commenter questioned whether assessment of a late fee in §810.4(4) was optional or mandatory.

Response: The council agrees and has changed the word, "may" to "shall" as a result of the comment.

Comment: In §801.4 regarding Registry Renewal a commenter pointed out that there were no procedures for granting a continuing education extension, which might be helpful due to continuing education (CE) requirements changing from a two year cycle to an annual cycle.

Response: The council agrees and has added language in §810.4(9), (10), and (11) for CE extension.

Comment: Regarding §810.4(1), a commenter recommended that the current requirement of 24 hours of CE every two years be retained. The commenter acknowledged that the overall number of hours did not change and that the annual requirement was easier to track under the proposed rules. The commenter was concerned that those who attend a two day conference would earn more than 12 hours and would not receive full credit for those hours if the council adopted the annual requirement as proposed.

Response: The council agrees with the concern but did not accept the comment for rule change. The annual requirement is necessary to protect the public and emphasizes the "continuing" nature of the requirement for competency. If the biennial requirement was retained, it would be possible for providers to go as long as 46 months without CE. Under the annual requirement as proposed, a provider could go as long as 22 months without CE. The fact that providers attend a two-day session for up to 16 hours and cannot carry-over the four hours

to the next annual renewal period is insufficient reason to modify the rules as proposed.

Comment: A commenter suggested that the continuing education for registry renewal in §810.4(7) be expanded to include sexual assault issues and/or victim training.

Response: The council agrees and added language as a result of the comment.

Comment: In §810.4 a commenter stated it was confusing as to when continuing education documentation for renewal must be submitted; the rule should clearly specify the fiscal year.

Response: The council agrees and added a definition for "fiscal year" to §810.2(9) and "by the end of every fiscal year" to §810.4(1) as a result of the comment. The fiscal year is September 1 through August 31.

Comment: A commenter suggested that clarification as to what type of "investigation" would be completed under §810.5(2).

Response: The council agrees and added language as a result of the comment; "investigation" was replaced with "checks."

Comment: Regarding §810.5(2), a commenter stated that the cost of random investigations should be shared equally by all providers, rather than the individuals selected for a random investigation.

Response: The council disagrees and does not accept the comment for a rule change. The rule as proposed reflects only a change from the existing section to state that the fees shall be determined by the agencies conducting the background check. The previous rule stated that the fee would not exceed \$23 for the background check. Under both rules, the fees must be paid by the RSOTP or the ASOTP.

Comment: Regarding §810.7, a commenter remarked that the word "training" had been misspelled.

Response: The council agrees and has corrected the spelling of "training" in the first sentence.

Comment: Regarding §810.8(2) a commenter asked would there be grounds for revocation, denial or non-renewal of registration if a registrant's primary license had not been renewed or was inactive.

Response: The council agrees and added language as a result of the comment. A primary license that had not been renewed or was inactive would be grounds for revocation, denial or non-renewal of registration.

Comment: A commenter stated that §810.9 should establish the responsibilities of the registrant in responding to a complaint.

Response: The council agrees and added a new subsection (c). The lettering in subsequent subsections has been changed accordingly as a result of the comment.

Comment: A commenter inquired if in §810.9, a registrant's certification was revoked, would notice be given to holders of the registry to prevent referring clients to that individual.

Response: The council agrees that notification is important. Disciplinary information will be available on the web site in the near future. No changes were made to the rules based on the comment.

Comment: Regarding §810.9, a commenter inquired if complainants would be identified to the registrant.

Response: Complaint information may be obtained through the Texas Open Records Act, including the identity of the complainant. No changes were made to the rules based on the comment.

Comment: A commenter suggested that §810.9(c) be changed allowing the executive director's designee to act on a complaint.

Response: The council agrees and added language to renumbered §810.9(b)(2) as a result of the comment.

Comment: Concerning §810.9(c)(2), a commenter recommended that notification by phone or in person be added.

Response: The council agrees and has added new language to renumbered §810.9(b)(2)(B).

Comment: A commenter suggested that only a record of all witnesses contacted in relation to a complaint needed to be included in §810.9(g)(4).

Response: The council agrees and deleted the word "persons" and added "witnesses" as a result of the comment.

Comment: A commenter suggested that catch titles are needed throughout §810.9.

Response: The council agrees and added catch titles in §810.9(a) through (g).

Comment: A commenter stated that it was unclear as to when and how a certificate should be returned to the council in §810.9(i)(5).

Response: The council agrees and added language as a result of the comment.

Comment: A commenter supported the rules and the establishment of professional guidelines for the practice of sex offender treatment in §§810.61-810.64. The commenter recommended caution in attempting to "legislate" the treatment process.

Response: The council appreciates the support. The rulemaking is a result of the council's efforts to carry out its statutory duties under Texas Civil Statutes, Article 4413(51), §8(1). The council intends to set standards for treatment of sex offenders that must be met by offender treatment providers and to assist offenders, victims, law enforcement, judiciary, providers, and others in understanding the phenomenon of sexual offense, sexual offenders and sex offender treatment.

Comment: A commenter stated that it was unclear in §810.62(b)(28) and (30), §810.63(b)(9) and §810.92(c)(6), if permission or consent can be verbal or if it must be in writing.

Response: The council agrees and added "written consent" to §810.62(28) and (30), §810.63(b)(9) and §810.92(c)(6) as a result of the comment.

Comment: Regarding §810.63(e)(3), a commenter raised questions and concerns about the rule requiring that "arrangement for using a standardized approved auditory (taped or read) version of the test instrument should be made," if the client's reading level is insufficient. The commenter suggested "these factors be an issue of ethical practice and not restrictively legislated." The commenter suggested adding language, "to the extent that such versions are available."

Response: The council agrees with comments and has added the language accordingly.

Comment: A commenter recommended that in §810.92(g)(1)(B) that only earned degrees from an accredited college or university be allowed in public information and advertising.

Response: The council agrees and added language as a result of the comment.

Comment: A commenter requested that §810.92(e)(1) be clarified so that a distinction be made between offering treatment services and forensic services.

Response: The council agrees with the comment and has added the word "treatment" as a result of the comment.

The comments on the proposed rules received by the department during the comment period were submitted by the ADAPT Counseling, Psychological Assessment Treatment and Training, Professional Psychological Services, P.C., Professional Associates Counseling & Consultation center and by department staff. The commenters were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The new sections are adopted under Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act and §8 provides the council with the authority to adopt rules concerning the registration requirements and procedures for sex offender treatment providers on the registry.

#### §810.2. 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 Civil Statutes, Article 4413(51).
- (2) Board - The Texas Board of Health.
- (3) Council - The Council on Sex Offender Treatment.
- (4) Department - The Texas Department of Health.
- (5) Registrant - A person who is listed in the registry.
- (6) Registry - A database maintained by the council that contains the names of persons who have met the council's criteria in the treatment of sex offenders and who provide mental health or medical services for the rehabilitation of sex offenders.
- (7) Rehabilitation Service - A mental health treatment or medical intervention program designed to treat or remedy a sex offender's mental or medical problem that may relate or contribute to the sex offender's criminal or paraphiliac problem.
- (8) Sex Offender - A person who:
  - (A) is convicted of committing or adjudicated to have committed a sex crime under the laws of a state or under federal law, including a conviction of a sex crime under the uniform code of military justice;
  - (B) is awarded deferred adjudication for a sex crime under the laws of a state or under federal law;
  - (C) admits to having violated the law of a state or federal law with regard to sexual conduct; or
  - (D) experiences or evidences a paraphiliac disorder as defined by the current version of the Diagnostic and Statistical Manual (DSM), as published by the American Psychiatric Association Press,

including any subsequent revision of the manual, which may place a person at risk for the violation of sex offender laws.

(9) Fiscal year- September 1 through August 31.

§810.3. *Registry Criteria.*

The council maintains a database of registrants whose experience in the rehabilitation of sex offenders may vary. The council shall recognize the experience and training of treatment providers in either one of two categories. These may be "Registered Sex Offender Provider" or "Affiliate Sex Offender Treatment Provider."

(1) Registered Sex Offender Treatment Provider (RSOTP). The council may waive any prerequisite to registration for an applicant after receiving the applicant's credentials and determining that the applicant holds a valid registration from another state that has registration requirements substantially equivalent to those of this state. To be eligible as a RSOTP, the applicant must meet all of the following criteria:

(A) be licensed or certified to practice as a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, licensed master social worker-advanced clinical practitioner, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides mental health or medical services for the rehabilitation of sex offenders. The license status must be current and active.

(B) satisfy the experience and training required below:

(i) possess a minimum of 1000 hours of clinical experience in the areas of assessment and treatment of sex offenders, obtained within a consecutive seven-year period, and provide two reference letters from professionals who know of the applicant's clinical work in sex offender treatment; and

(ii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title (relating to Documentation of Experience and Training), obtained within three years prior to application date, in the specific area of sex offender treatment and evaluation. Of the initial 40 hours training required, 30 hours or 75% must be in sex offender rehabilitation training. Ten hours or 25% must be in sexual assault issues and/or sexual assault victim related training;

(C) submit a complete and accurate description of their treatment program on a form provided by the council;

(D) comply with the following. Persons making initial application or renewing their eligibility for the registry:

(i) must not have been convicted of any felony, or of any misdemeanor involving a sex offense, nor have received deferred adjudication for a sex offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(ii) must not have had licensure revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iii) must not have been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iv) must not have been determined by the council to have engaged in deceit or fraud in connection with the delivery

of services or documentation of registry requirements or registry eligibility;

(v) must submit themselves to a criminal history background check. An applicant may be required to submit a complete set of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints must be taken by a peace officer or a person authorized by the council and must be placed on a form prescribed by the Texas Department of Public Safety; and

(vi) must not have violated any rule adopted by the council;

(E) submit an application fee defined in §810.5 of this title (relating to Fees);

(F) submit a copy of his or her professional license, as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application before a notary public; and

(H) complete the process within 90 days of the application's receipt in the council office.

(2) Affiliate Sex Offender Treatment Provider (ASOTP). To be eligible as an ASOTP, the applicant must meet all of the following criteria:

(A) be licensed or certified to practice as a physician, psychiatrist, psychologist, psychological associate, licensed professional counselor, licensed marriage and family therapist, licensed master social worker, advanced nurse practitioner, licensed marriage and family therapist associate, licensed professional counselor intern, provisionally licensed psychologist, recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for the rehabilitation of sex offenders;

(B) satisfy the experience and training required below:

(i) possess a minimum of 250 hours of clinical experience in the areas of assessment and treatment of sex offenders, provide two reference letters from professionals who know of the applicant's clinical work in sex offender treatment;

(ii) be supervised by an RSOTP in accordance with paragraph (3)(B) of this subsection until RSOTP status is reached; and

(iii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title, obtained within three years prior to application date, in the specific area of sex offender treatment and evaluation. Of the initial 40 hours training required, 30 hours or 75% must be in sex offender rehabilitation training. Ten hours or 25% must be in sexual assault issues and/or sexual assault victim related training;

(C) submit a complete and accurate description of their treatment program on a form provided by the council;

(D) comply with the following. Persons making initial application or renewing their eligibility for the registry:

(i) must not have been convicted of any felony, or of any misdemeanor involving a sex offense, nor have received deferred adjudication for a sex offense, unless sufficient evidence of rehabilitation has been established as determined by the council;



(ii) must not have had licensure revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iii) must not have been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iv) must not have been determined by the council to have engaged in deceit or fraud in connection with the delivery of services or documentation of registry requirements of registry eligibility;

(v) must submit themselves to a criminal history background check. An applicant may be required to submit a complete set of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints must be taken by a peace officer or a person authorized by the council and must be placed on a form prescribed by the Texas Department of Public Safety; and

(vi) must not have violated any rule adopted by the council;

(E) submit an application fee defined in §810.5 of this title;

(F) submit a copy of his or her professional license or certification as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application in the presence of a notary public; and

(H) complete the process within 90 days of the application's receipt in the council office.

(3) Supervision. All ASOTP's providing any sex offender treatment must be supervised. Supervision will include the following.

(A) An ASOTP providing any sex offender treatment is required to be under the supervision of a RSOTP. The ASOTP must provide a notarized copy of supervision documentation annually, to the council during the renewal period.

(B) The ASOTP must receive face-to-face supervision at least one hour per month, or if providing more than 20 hours of direct clinical sex offender treatment per month, the ASOTP must receive one hour of supervision per every 20 hours of sex offender treatment provided.

(C) The supervising RSOTP must submit annual documentation to the council at the time of their renewal; the documentation will contain the name of the ASOTP's that have been supervised during the year. The supervising RSOTP will be required to use a form provided by the council.

(4) Registration Certificates. Upon successful completion of the application or renewal process, registrants will receive an official certificate from the council. This certificate must be displayed at all locations where sex offender treatment is provided. Duplicate certificates may be obtained for this purpose.

(A) The Council of Sex Offender Treatment Providers (Council) shall prepare and provide to each registrant a certificate which contains the registrants name and certificate number.

(B) A registrant shall not display a registration certificate which has been reproduced or is expired, suspended, or revoked.

(C) Any certificate issued by the council remains the property of the council and must be surrendered to the council upon demand.

(D) The address and telephone number of the council must also be displayed at all locations where sex offender treatment for the purpose of directing complaints against the registrant to the council.

(5) Application processing. The council shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from a completed application receipt 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 registry renewal - 30 days; and

(ii) letter of initial application deficiency - 30 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) approval of application- 42 days; and

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

(6) Refund processing. The council shall comply with the following procedures in processing refunds of fees paid to the council. In the event an application is not processed in the times stated in paragraph (5)(A) of this section.

(A) The applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. 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 registration or renewal exceeds by 15% or more, the applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the council in the application process caused the delay; or any other condition exists giving the council good cause for exceeding the time.

(C) If the executive director denies a request for reimbursement under subparagraph (A) of this paragraph the applicant may appeal to the council for a timely resolution of any dispute arising from a violation of the times. The applicant shall give written notice to the council at the address of the council that he or she requests full reimbursement of all 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 any good cause for exceeding the applicable time. The council shall provide written notice of the decision to

the applicant and the executive director. The council shall decide an appeal in favor of the applicant, if the applicable time was exceeded and good cause was not established. If the council decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(D) The times for contested cases related to the denial of registration or renewal are not included with the times listed in paragraphs (5)(A) and (5)(B) of this subsection. The time for conducting a contested case hearing runs from the date the council receives a written hearing request until the council'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 council meetings.

#### §810.4. Registry Renewal.

In order to maintain eligibility for the registry, the primary license of each renewal must be current and active. All renewal applicants must comply with the following:

(1) Number of continuing education hours. All renewal applicants must submit by the end of every fiscal year, a minimum of 12 hours of continuing education documentation in sex offender treatment of which three hours may be in sexual assault victim related training, beginning September 1999.

(2) Renewal forms. All renewal applicants must submit renewal forms provided by the council and renewal fees defined in §810.5 of this title (relating to Fees).

(3) Registration certificate expiration. All registration certificates expire September 30, no matter the date of initial registration.

(4) Renewal application postmark date. All renewal applications must be postmarked by September 1 or a late fee shall be assessed.

(5) Continuing education activities. Continuing education activities shall be instructor-directed activities such as conferences, symposia, seminars and workshops and must be accepted or approved for continuing education credits by the licensing agencies regulating professionals listed in §810.3 of this title (relating to Registry Criteria).

(6) Home or self-directed study courses. No home or self-directed study courses will be considered for continuing education hours.

(7) Presentation of continuing education. All renewal applicants may count a maximum of four hours per renewal period for the presentation of continuing education training, lectures, or courses in the specific area of sex offender treatment and evaluation, sexual assault issues and/or victim training.

(8) Carrying over continuing education hours. No hours may be carried over from one renewal period to another renewal period.

(9) Continuing education extension.

(A) A registrant who has failed to complete the requirements for continuing education (CE) may be granted a 90-day extension by the executive director.

(B) The request for an extension of the CE period must be made in writing and must be postmarked prior to September 30.

(C) If an extension is needed a late fee equal to one-half of the renewal fee stated in §810.5(4) will be assessed.

(D) The next CE period shall begin the day after the CE has been satisfied.

(E) Credit earned during the extension period cannot be applied toward the next CE period.

(F) A person who fails to complete the CE requirements during the extension or who does not request an extension holds an expired registration and may not use the RSOTP or ASOTP credential or certificate.

(10) Completion of continuing education after extension. A registration may be renewed upon completion of the required CE within the given extension period, submission of the registration form, and payment of the applicable late renewal fee.

(11) Failure to complete continuing education. A person who fails to complete CE requirements for renewal and failed to request an extension to the CE period may not renew the registration. The person may obtain a new registration by complying with the current requirements and procedures for obtaining a license.

#### §810.5. Fees.

The council has established the following registration fees.

(1) All applicants must submit a non-refundable application fee of \$200 and meet the following requirements for consideration and inclusion in the registry:

(A) return the completed, signed and notarized application form provided by the council;

(B) submit the registration fee in the form of a check or money order; and

(C) submit, within 90 calendar days, any documentation required to complete the application if requested by the council, or a new application and registration fee must be submitted.

(2) Additional fees will be charged for Federal Bureau of Investigations and Texas Department of Public Safety criminal background checks. Fees shall be determined by those agencies conducting the investigation.

(3) Renewal forms and information will be mailed to each registrant at least 60 days prior to registration expiration and sent to the registrant's last address of record with the council.

(4) To renew, an RSOTP or an ASOTP must submit an annual renewal fee of \$100 and meet the following requirements.

(A) A person who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required registration fee to the council on or before the expiration date of the registration.

(B) If a registration has been expired for 90 days or less, the late renewal fee is \$150.

(C) If a registration has been expired for longer than 90 days but less than one year, the reinstatement fee is \$200.

#### §810.8. Revocation, Denial or Non-Renewal of Registration.

The council shall have the right to revoke a registration, refuse to accept a registration, and/or refuse to renew a registration upon proof that the treatment provider has:

(1) been convicted of any felony or a misdemeanor involving a sexual offense, or has ever received deferred adjudication

for a sexual offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(2) had licensure placed on inactive status, not renewed, revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(3) been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(4) been determined by the council to have engaged in deceit or fraud in connection with the delivery of services, supervision, or documentation of registry requirements or registry eligibility;

(5) violated the Act or any rule adopted by the council;

(6) been prohibited from renewal by the Education Code, §57.491 (relating to Loan Default Ground for Non-renewal of Professional or Occupational License); or

(7) been prohibited from renewal by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support).

*§810.9. Complaints, Disciplinary Actions, Administrative Hearing and Judicial Review.*

(a) Reporting a complaint. A person wishing to report an alleged violation of the Act or this chapter by a registrant or other person shall notify the executive director. The initial notification may be in writing, by fax, or by personal visit to the council office.

(b) Review of complaint.

(1) The executive director will review the complaint for violations of the Act or any rule adopted by the council.

(2) If it is determined that a violation of the Act or these sections may have occurred, the executive director or executive director's designee will:

(A) refer complaint to registrant's primary licensing agency within 60 days;

(B) notify the registrant or other person in writing, by phone or in person that a complaint has been filed; and

(C) notify the complainant in writing of receipt of the complaint.

(c) Responsibilities of registrant.

(1) A registrant shall cooperate with the council by furnishing required documents or information and by responding to a request for information or a subpoena issued by the council or its authorized representative.

(2) A registrant shall comply with any order issued by the council relating to the registrant. A licensee shall not interfere with a council investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(3) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or designee to the case and will be required to provide a sworn response to the allegations within two weeks of that notice.

(4) Failure to respond to the allegation within the two week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(d) Actions by the council. The council is authorized to revoke, suspend or refuse to renew a registration, place on probation a person whose registration has been suspended, or reprimand a registrant for a violation of the Act, or a rule of the council.

(e) Probation of a suspension. If the suspension is probated, the council is authorized by §13C(a)(1)-(3) of the Act to impose certain requirements and limitations on a person.

(f) Disciplinary action on primary license. If any professional license of the registrant is revoked or suspended, the council shall propose revocation of registration.

(g) Complaint information. The council shall keep information about each complaint filed with the council. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all witnesses contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the council took no action, an explanation of the reason the complaint was closed without action.

(h) Formal hearing.

(1) The formal hearing shall be conducted according to the provisions of the Administrative Procedure Act and this chapter. The parties to a hearing shall be the applicant or registrant and the executive director. The formal hearing shall be held in Travis County, Texas unless otherwise determined by the Administrative Law Judge (ALJ) or upon agreement of the parties.

(2) Prior to institution of formal proceedings to revoke or suspend a registrant, the executive director shall give written notice to the registrant by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the executive director shall give the registrant written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the registrant must give written notice to the executive director that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed to the registrant's last reported address unless another date of receipt is reflected on a U.S. Postal Service return receipt.

(A) If the registrant fails to request a hearing, the registrant is deemed to have waived the hearing, and a default order may be entered.

(B) If the registrant requests a hearing within 10 days after receiving the notice of opportunity for hearing, the executive director shall initiate formal hearing procedures in accordance with this section.

(i) Final action.

(1) If the council suspends a registration, the suspension remains in effect for the period of suspension ordered, or until the executive director or the council determines that the reasons for suspension no longer exist. The registrant whose registration has been suspended is responsible for securing and providing to the executive director such evidence, as may be required by the council, that the reasons for the suspension no longer exist. The executive director or the council shall investigate prior to making a determination.

(2) During the time of suspension, the former registrant shall return all registration certificates to the council.

(3) If a suspension overlaps a renewal period, the former registrant shall comply with the normal renewal procedures in these sections. The council may not renew the certificate until the executive director or the council determines that the reasons for suspension have been removed.

(4) A person whose application is denied or whose registration certificate is revoked is ineligible to apply for registration under this Act for one year from the date of the denial or revocation.

(5) Upon revocation or non-renewal, the former registrant shall return all certificates issued to the registrant by the council. The certificate(s) shall be returned to the council by certified mail, hand-delivered, or by a delivery service, within 30 days of request.

(j) Appeal of a decision. A person may appeal a final decision of the council to exclude or remove the person from the registry by filing a petition for judicial review in the manner provided by the Government Code, Chapter 268, Article 1, §2001.176.

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 20, 1998.

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Collier M. Cole, Ph.D.

Chairperson

Council on Sex Offender Treatment

Effective date: August 9, 1998

Proposal publication date: May 8, 1998

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



## Subchapter B. Criminal Background Check Security

### 22 TAC §§810.31-810.34

The new sections are adopted under Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act and §8 provides the council with the authority to adopt rules concerning the registration requirements and procedures for sex offender treatment providers on the registry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter C. Standards of Practice

### 22 TAC §§810.61-810.64

The new sections are adopted under Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act and §8 provides the council with the authority to adopt rules concerning the registration requirements and procedures for sex offender treatment providers on the registry.

#### §810.62. Council Assertions.

(a) Registrants shall:

- (1) be committed to community protection and safety;
- (2) not discriminate against clients with regard to race, religion, gender preference, or disability;
- (3) treat clients with dignity and respect, regardless of the nature of their crimes or conduct;
- (4) be knowledgeable of legal statutes and scientific data relevant to this area of specialized practice;
- (5) perform professional duties with the highest level of integrity, maintaining confidentiality within the scope of statutory responsibilities;
- (6) insure that the client fully understands the scope and limits of confidentiality in the context of his or her particular situation;
- (7) refrain from using professional relationships to further their personal, religious, political, or economic interest other than accepting customary professional fees;
- (8) not engage in sexual relationships with clients (sex between a mental health services provider and a client is a second degree felony in Texas);
- (9) fully inform clients in advance of fees for services;
- (10) refrain from knowingly providing treatment services to a client who is in treatment with another professional without initial consultation with the current registrant;
- (11) make appropriate referrals when the registrant is not qualified or is otherwise unable to offer services to a client;
- (12) insure that colleagues are qualified by training and experience before making a referral to them;
- (13) when withdrawing services, minimize possible adverse effects on the client and the community by continuing treatment until the client has been admitted elsewhere;
- (14) take into account the legal/civil rights of the clients, including the right to refuse treatment;
- (15) make no claims regarding the efficacy of treatment that exceed what can be reasonable expected and supported by empirical literature;
- (16) avoid drawing conclusions or rendering opinions that exceed the present level of knowledge in the field or the expertise of the evaluator;

(17) attempt to resolve with the clinician and/or report to the appropriate licensing or regulatory authority unethical, incompetent, and dishonorable treatment or evaluation practices; and

(18) display the address and telephone number of the council in all sites where sex offender treatment services are provided for the purpose of directing complaints to the council.

(b) Registrants assert that:

(1) community safety takes precedence over any conflicting consideration, and ultimately, is in the best interests of the offender and society;

(2) inappropriate or unethical treatment damages the credibility of all treatment and presents an unnecessary risk to the community;

(3) registrants shall have no history of criminal or sexually deviant acts;

(4) criminal investigation, prosecution, and court orders for treatment may be components of effective intervention;

(5) where practical, registrants should actively involve community supervision officers, child protective services workers, and victim therapists in case management;

(6) a voluntary client accepted for treatment should be held to the same standards of compliance as are mandated sex offenders;

(7) it is imprudent to release an untreated sex offender without providing offense-specific evaluation and treatment or specialized supervision;

(8) without external pressure many sex offenders will not follow through in treatment. Internal motivation improves the prognosis, but is not a guarantee of success;

(9) comprehensive assessment of the sex offender must precede treatment and includes issues addressed in §810.63 of this title (relating to Assessment and Evaluation Concerns);

(10) sex offenders require comprehensive, long term, offense-specific treatment. Currently, cognitive-behavioral approaches that utilize sex offender peer groups may be the most effective and best evaluated methods of treatment. Self-help groups, drug intervention, or time limited treatment should be used only as adjuncts to more comprehensive treatment. For some sex offenders, incarceration without treatment may increase the risk of recidivism;

(11) a written individualized treatment plan that identifies the issues, intervention strategies, and goals of treatment shall be prepared for each sex offender. Treatment plans should be reassessed periodically;

(12) the treatment plan may include behavioral contracts which outline specific expectations of the sex offender, his/her family, and the sex offender's support systems. These contracts should include provisions to avert high risk situations. These contracts should be reassessed periodically;

(13) progress, or lack thereof, should be clearly documented in treatment records. Specific achievements, failed assignments and rule violations should be recorded. This information should be provided to the appropriate supervising officer in the justice system;

(14) progress in treatment must be based on specific, measurable objectives, observable changes, and demonstrated ability to apply changes in relevant situations. For most sex offenders,

progress requires changes in the sex offender's behavior, attitudes, social and sexual functioning, cognitive processes, and arousal patterns. These changes should demonstrate increased understanding by the offender of his own deviant behavior, sensitization to the effects on a victim, and ability to seek and apply help;

(15) when a sex offender has made the changes required in treatment, there should be a gradual and commensurate decline of intervention, support, and supervision following an offense-specific treatment program. Ongoing support to maintain changes made in treatment is necessary and aftercare and monitoring are desirable;

(16) there will be instances when the registrant should refuse to treat a sex offender because essential ancillary resources do not exist to provide the necessary levels of intervention or safeguards;

(17) the registrant has an ethical obligation to refer the client to a more comprehensive treatment program and/or to the judicial system, when the registrant determines that a sex offender is not making the changes necessary to reduce his/her risk to the community;

(18) failure on the part of clients to abide by their treatment plans and/or contracts should result in referral back to the supervising officer in the justice system;

(19) a registrant may decide to decline further involvement with a client who refuses to address any critical aspect of treatment;

(20) registrants need to immediately notify the appropriate authority when a client drops out of court-ordered treatment;

(21) most sex offenders enter the criminal justice system with varying degrees of denial regarding their behavior. Overcoming denial is a gradual process achieved in treatment. The existence of some degree of denial should not preclude an offender entering treatment, although the degree of denial should be a factor in identifying the most appropriate form and location of treatment;

(22) sex offender treatment is unlikely to be effective unless the sex offender admits his/her behavior. Community based treatment may not be appropriate for sex offenders who continue to demonstrate complete denial after a trial period of treatment;

(23) registrants should not rely exclusively on self report by the sex offender to assess progress or compliance with treatment requirements and/or probation or parole orders. Registrants should rely on multiple sources of information regarding the sex offender's behavior and when possible utilize physiological methods such as polygraph, Phallometric, and other research based physiological measurements;

(24) physiological measures should not replace other forms of monitoring but may improve accuracy when combined with active surveillance, collateral verifications, and self-report. Phallometric assessment in Texas must be conducted by an order and under the supervision of a physician. Polygraph examinations should only be conducted by licensed examiners that meet the "Recommended Guidelines for the Clinical Polygraph Examinations of Sex Offenders" as developed by the Joint Polygraph Committee on Offender Testing (JPCOT);

(25) polygraph can be effective in encouraging disclosure of prior events and adherence to rules. This procedure should never be the only method used to determine factual information;

(26) Phallometric methods cannot be used to prove an individual did or did not, or will or will not commit a sexual offense.

However, they can be useful in identifying sexual preferences and changes in preferences over time;

(27) informed, voluntary consent should always be obtained prior to engaging clients in aversive conditioning;

(28) if Phallometric assessment or aversive therapies are used with persons 15 years of age or younger, consent for such assessment and therapy should be obtained from the juvenile sex offender and written consent for such assessment and therapy should be obtained from the juvenile sex offender's parents, and the procedures should be reviewed by a multi-disciplinary professional or institutional advisory group. This is intended to insure that individuals not intimately involved in the treatment of the patient have input regarding the appropriateness of such methods consistent with the developmental level of the child;

(29) individuals under age thirteen should not undergo Phallometric assessment or aversive therapies except in rare cases which must be approved by a multi-disciplinary advisory group;

(30) in cases of intellectually handicapped sex offenders who are unable to give written consent, an interdisciplinary review and parental written consent are the ways to obtain permission to proceed with treatment;

(31) removal of an intrafamilial sex offender against children from a residence in which children reside (instead of the children) is the preferred option;

(32) treatment referrals should be offered to the non-offending spouse and children in cases where a parent has been removed and to the family where a juvenile sex offender has been removed;

(33) if the sex offender has a history of sexual arousal to or reported fantasies of sexual contact with children, he or she should be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist;

(B) the sex offender has demonstrated control over his or her deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) court mandated conditions do not prohibit such contact;

(34) there is evidence to support family participation in the treatment of sex offender. Where feasible and appropriate, spouses and other family members should be included. Victims or vulnerable children should be excluded until such time as joint therapy is determined to be appropriate;

(35) the registrant should make every effort to collaborate with the victim's therapist in making decisions regarding communication, visits and reunification. Registrants should be supportive of the victim's wishes regarding contact with the offender. Contact should be arranged in a manner that places child/victim safety first. When assessing child safety, both psychological and physical well-being should be considered. The registrant shall insure that custodial parents or guardians of the children have been consulted prior to authorizing contact and that contact is in accordance with Court directives; and

(36) if reunification is deemed appropriate, the process should be closely supervised. There must be provisions for monitoring behavior and reporting rule violations. Victim comfort and safety

should be assessed on a continuing basis. The registrant should recognize that supervision during visits with children is critical for those whose crimes are against children, or who have demonstrated the potential to abuse children. Caution should be taken when selecting and preparing visitation supervisors.

§810.63. *Assessment and Evaluation Concerns.*

(a) The evaluation focuses on both the risks and needs of the sex offender, as well as identifying factors from social and sexual history which may contribute to sexual deviance. Evaluations provide the basis for the development of comprehensive treatment plans and should provide recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, as well as the identified risk the sex offender presents to the community. There is no known set of personality characteristics that can differentiate the sex offender from the non-sex offender. Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner.

(b) The following standards were largely adapted from a publication of the Association for the Treatment of Sexual Abusers entitled, *Ethical Standards and Principles for the Management of Sexual Abusers*, Revised 1997. Evaluations shall precede treatment. In preparing evaluations of sex offenders, registrants are expected to:

(1) be fair and impartial, providing objective and accurate data;

(2) respond only to referral questions that fall within the evaluator's expertise and present level of knowledge;

(3) be respectful of the client's right to be informed of the reasons for the evaluation and the interpretation of data, as well as the basis for recommendations and conclusions;

(4) be aware of the client's legal status;

(5) be mindful of the limitations of client's self-report and make all possible efforts to verify the information provided by the client;

(6) use evaluative procedures and techniques sufficient to respond to the presenting issues, as well as to provide appropriate substantiation for the resulting conclusions and recommendations;

(7) acknowledge if an evaluation consisted of only a review of data, with no client contact, and clarify the impact that limited information has on the reliability and validity of the resulting report;

(8) provide informed consent, releases and/or limit of confidentiality documents in written form and employ verbal explanations for non-readers;

(9) if the client is a juvenile or incapable of giving written consent for any other reason, obtain written consent for testing, evaluation and information exchange from the appropriate guardian. Assent from the individual being evaluated should be obtained whenever possible;

(10) thoroughly review written documentation and collateral interviews. This involves gathering and reviewing information from all available and relevant sources, including:

(A) criminal investigation records;

(B) child protection service investigations;

(C) previous evaluations and treatment progress reports;

(D) mental health records and assessments;

- (E) medical records;
- (F) correctional system reports;
- (G) probations/parole reports;
- (H) offense statements from sex offender; and
- (I) offense statements from victim;

(11) whenever possible, interview the client's significant other and/or family of origin;

(12) cautiously interpret evaluation conducted without collateral information;

(13) list and acknowledge in a written report evaluation procedure summaries, conclusions, recommendations, and all collateral reports and interviews;

(14) re-interviews of victims should not be used for the purpose of gathering information during the sex offender's evaluation; and

(15) keep the sex offender and victim interview and evaluation processes separate. If that is not possible, the evaluator must be extremely vigilant to avoid bias.

(c) The evaluation procedures may include:

- (1) clinical review;
- (2) paper/pencil testing;
- (3) intellectual assessment; and
- (4) physiological assessments.

(d) Information gathered in the evaluation process includes, but is not limited to:

- (1) intellectual and cognitive functioning;
- (2) mental status;
- (3) medical history of head injuries, physical abnormalities, enuresis, encopresis, current use of medication, allergies, accidents, operations, and major medical illnesses;
- (4) self-destructive behaviors, self mutilation and suicide attempts;
- (5) psychopathology and personality characteristics;
- (6) family history;
- (7) history of victimization; physical, emotional and/or sexual;
- (8) education and occupation history;
- (9) criminal history, both sexual and non-sexual;
- (10) history of violence and aggression including use of weapons;
- (11) interpersonal relationships, both past and current;
- (12) cognitive distortions;
- (13) social competence;
- (14) impulse control;
- (15) substance abuse;
- (16) denial, minimization and inability to accept responsibility;

(17) sexual behavior, including sexual development, adolescent sexuality and experimentation, dating history, intimate sexual contacts, gender identity issues, adult sexual practices, masturbatory practices, sexual dysfunction, fantasy content, and sexual functioning; and

(18) sexually deviant behavior, including description of offense behaviors, number of victims, gender and age of victims, frequency and duration of abusive sexual contact, victim selection, access, and grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after offense, and sexual arousal patterns.

(e) Registrants will subscribe to the following tenets regarding client assessment.

(1) The comprehensive assessment of the client's sexually deviant behavior is specific to the evaluation of the sex offender.

(2) It is important to be sensitive to the individual's cognitive functioning, including reading and writing capabilities, prior to arranging the battery of testing instruments.

(3) If a client cannot read at the level necessary to comprehend the test questions, arrangements for using a standardized approved auditory (taped or read) version of the test instrument should be made, to the extent such versions are available.

(4) The clinical interview must incorporate sufficient discussion necessary to augment, clarify and explore the information obtained from the review of collateral materials (and interviews), as well as the other components of the evaluation (testing results, etc.).

(5) It is important to note the degree of similarity or disparity between the abuser and the victim's statements.

(6) The client's explanations for false allegations should be documented.

(7) Assessment of treatment needs should identify strengths and weaknesses in the individual's sociosexual functioning for the purpose of directing treatment efforts to the appropriate areas.

(8) Both community safety and the degree to which a sex offender is capable and willing to manage risk should be considered when generating recommendations.

(9) A thorough evaluation should be completed prior to a sex offender being accepted into a community based treatment program.

(A) If a significant amount of time has lapsed between the completions of the evaluation and when the individual applies for acceptance into a treatment program, an evaluation update is required.

(B) The intent of the update should not be to duplicate the original evaluation, but to gather current data upon which the original treatment plan can either be confirmed or amended.

(10) A sex offender treatment provider should never recommend an inadequate treatment program or level of risk management because existing resources limit or preclude adequate or appropriate services.

§810.64. *Issues To Be Addressed In Treatment.*

(a) During the decade preceding 1995, the field of sex offender evaluation and treatment has undergone many changes. Research and clinical reports have begun to demonstrate that a number of treatment methods may be effective in reducing some forms of sexual deviance.

(b) Although existing data are inadequate to determine which type of treatment is the most effective for which type of sex offender, the following treatment methods generally are accepted as those most important to the effective treatment of sexual deviancy.

(1) Arousal Control. Control of deviant arousal, fantasies, and urges is a priority with most sex offenders. Fantasy and sexual arousal to fantasy are precursors to deviant sexual behavior. It should be assumed that most offenders have gained sexual pleasure from their specific form of deviance. Arousal control methods do not eliminate but only help control arousal. It is therefore necessary that clients learn to apply these techniques in everyday situations, without reliance on a special apparatus. Arousal control may require periodic "booster" sessions for the remainder of the client's life. Effective arousal control must also include methods to control spontaneous deviant fantasies and to minimize contact with stimulating objects or persons. Arousal control should proceed from the most effective methods for reducing arousal to less effective methods. To document changes in arousal control, physiological measurement is essential. Multiple measures over time are required to determine change reliability.

(2) Cognitive Therapy. Cognitive distortions are thoughts and attitudes that allow offenders to justify, rationalize, and minimize the impact of their deviant behavior. Cognitive distortions allow the offender to overcome prohibitions and progress from fantasy to behavior. These distorted thoughts provide the sex offender with an excuse to engage in deviant sexual behavior, and serve to reduce guilt and responsibility. Cognitive therapy strives to identify, assess, and modify cognition's that promote sexual deviance. Cognitive therapy is considered a vital component of treatment.

(3) Relapse Prevention. Current knowledge of deviant sexual behavior suggests that there is a series of behaviors, emotions, and cognition's that is identifiable and which precede deviant sexual behavior in a predictable manner. The ability to accurately identify these maladaptive behaviors is a primary goal for every offender in treatment. Autobiographies, offense reports, interviews and cognitive-behavioral chains are used to identify antecedents to offending. The ability to intervene can be enhanced by training primary partners and other support persons to recognize maladaptive behaviors and to encourage application of proper coping behaviors.

(4) Victim Empathy. Although there is no clear evidence to suggest that all sex offenders can gain true empathy for victims of abuse, a universal goal of treatment is to learn to understand and value others. Highlighting the consequences of victimization helps sensitize the offender to the harm he or she has done. The use of analogous experiences has been shown to be effective especially with adolescents.

(5) Biomedical Approaches. Intervention with psychopharmacological agents is useful in select cases. Antiandrogens such as depo-provera act by reducing testosterone and may be helpful in controlling arousal and libido when these factors are undermining progress in therapy or increasing the risk of re-offending before significant progress can be made in the cognitive aspects of therapy. Antidepressants and medications targeting obsessive compulsive symptoms are also useful in some individuals where those symptoms play a role in the overall psychodynamic picture. Likely candidates are those who are predatory, violent, have had prior treatment failures, and report an inability to control deviant sexual arousal. Use of these agents should never be the only method of treatment.

(6) Increasing Social Competence. Sex offenders often have deficits in basic social and interpersonal skills. They may lack the ability to develop and sustain reciprocal friendships. Many sex

offenders are poor problem-solvers, lack assertiveness, and do not adequately manage anger or stress. One goal of treatment is to improve the offender's ability to deal effectively with social situations and develop meaningful relationships with others.

(7) Improving Primary Relationships. Failure to develop and maintain a reciprocal, living sexual relationship with an adult partner may lead one to seek out alternative sexual outlets. Identifying specific sexual dysfunctions, sex therapy, and training in dating skills and erotic techniques may be necessary to develop a functional lifestyle. Failure to involve the current partners in therapy often leads to the same stresses and failure in the relationship that precipitated the sexual deviancy.

(8) Couples/Family Therapy. To facilitate transition of the sex offender's partner into therapy a variety of treatment modalities are recommended. Individual therapy, non-offending spouses groups, and/or parents of victims groups prepare the partner for the issues and methods involved in sex offender treatment. Marital therapy or couples group therapy focused on sexual offending is essential in cases where a sex offender is to return home. If an offender is to eventually to live in a home where victims or children reside, a predetermined integration sequence should be followed which addresses role and boundary issues. This should include close supervision and a variety of safeguards for the protection of children.

(9) Support Systems. Involvement of close friends and family in therapy provides the offender with a milieu in which support is available. Part of the transition to follow-up is a reduction in group and individual therapy. To compensate for this loss of support and surveillance, the support system should assist the offender in avoiding and coping with antecedents to sexual deviance. The support system should include individuals from the offender's daily life (i.e., family, friends, co-workers, church members, and extended family).

(10) Comorbid Diagnosis. In some sex offenders there are sufficient signs and symptoms to merit an additional diagnosis by DSM IV criteria. These diagnoses can be anywhere in the entire spectrum of psychiatric disease. The most common are alcohol abuse, substance abuse and affective disorders. Treating an alcohol or substance problem should not be assumed to make sex offender treatment unnecessary. Occasionally, the delusions and hallucinations of schizophrenia will be associated with the individual committing sexual offenses. The comorbid diagnoses should be treated with the appropriate therapies concomitantly with the treatment for sex offending behavior except in the case of schizophrenia where the antipsychotic therapy would obviously take precedence.

(11) Follow-up Treatment. A therapeutic regime that includes follow-up significantly increases the likelihood that gains made during treatment will be maintained. In order for new habits and skills to be reinforced and to monitor compliance with treatment contracts, follow-up treatment should involve periodic "booster" sessions to reinforce and assess maintenance of positive gains made during treatment. This can be facilitated by involving the support group, and using polygraph and Phallometric assessment. Input from support group members, polygraph examinations, and Phallometric assessments may serve to deter future offenses or alert therapists to problems.

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-9811426

Collier M. Cole, Ph.D.



Chairperson  
Council on sex Offender Treatment  
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◆ ◆ ◆  
**Subchapter D. Code of Professional Ethics**

**22 TAC §§810.91-810.92**

The new sections are adopted under Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act and §8 provides the council with the authority to adopt rules concerning the registration requirements and procedures for sex offender treatment providers on the registry.

*§810.92. Code Of Ethics.*

(a) Professional Conduct.

(1) Each registrant will provide professional service to anyone, regardless of race, religion, sex, political affiliation, social or economic status, or choice of life style. A registrant will not allow personal feelings related to a client's alleged or actual crimes or behavior to interfere with professional judgment and objectivity. When a registrant cannot offer service to a client for any reason, he or she will make a proper referral. Registrants are encouraged to devote a portion of their time to work for which there is little or no financial return.

(2) Each registrant will refrain from using his or her professional relationship, related to the assessment or treatment of a client, to further personal, religious, political or economic interests, other than customary professional fees.

(3) The proper conduct of each registrant is a personal matter to the same degree as it is with any other individual, except when such conduct compromises the fulfillment of professional responsibilities or reduces the public trust in this specialty area. Consequently, registrants are sensitive to predominant community standards and the potential impact that either conformity to, or deviation from these standards can have on the perception of their own performance, as well as that of their colleagues.

(4) Each registrant has an obligation to engage in continuing education and professional growth including active participation in meetings and affairs or relevant professional affiliations.

(5) Each registrant will refrain from diagnosing, treating or advising on problems outside the recognized boundaries of his/her competence.

(b) Client Relationships.

(1) Each registrant, offers dignified and reasonable support to a client, and does not exaggerate the efficacy of his or her service.

(2) When engaged in private practice, each registrant recognizes the importance pertaining to financial matters with clientele. Arrangements for payments are to be settled at the beginning of an assessment or a therapeutic relationship.

(3) Each registrant shall avoid dual relationships with clientele. These may impair professional judgment or pose a risk of exploiting the client. Examples of dual relationships include, but are not limited to, the following: treatment of family members, close friends, employees, supervisors, or supervisees.

(4) Sexual harassment or intimacy with clients is unethical. Sexual behavior between a registrant and a client constitutes a felony offense in Texas.

(5) A registrant shall not withdraw services to clients in a precipitous manner. Each member shall give careful consideration to all factors in the situation and take care to minimize possible adverse effects on the client.

(6) Each registrant who anticipates termination or disruption of service to clients shall notify the clients promptly and provide for transfer, referral, or continuation of service in keeping with the client's needs and preferences.

(7) Each registrant who serves the clients of a colleague during a temporary absence or emergency will serve those clients with the same consideration of that afforded any client.

(8) In their professional role, registrants will avoid any action which will violate or diminish the legal and civil rights of clients or others who may be affected by their actions.

(c) Confidentiality.

(1) Registrants will keep records on each client, storing them in such a way as to ensure their safety and confidentiality in accordance with the highest professional and legal standards.

(2) Each registrant is responsible for informing clients of the limits of confidentiality. Clients should be informed of any circumstances which may trigger an exception to the agreed upon confidentiality.

(3) Registrants in criminal justice settings, or elsewhere, should inform all parties with whom they are working of the level of confidentiality which applies. They should clarify any circumstances which would constitute exceptions to confidentiality, in advance of the service being rendered. Each registrant should make clear to the client any "conflict of interests" or dual-client relationships which affect his/her current relationship with a client.

(4) Written permission and informed consent shall be granted by the client before any data may be divulged to other parties.

(5) When responding to an inquiry for information and when a written release by the client is obtained, written and oral reports should present data germane to the purpose of the inquiry. Every effort should be made to avoid undue invasion of privacy for the client or other related person.

(6) As noted above, information is not communicated to others without the written consent of the client unless the following circumstances occur.

(A) There exists a clear and immediate danger to the person from the client.

(B) There is an obligation to comply with specific statutes requiring reports of suspected abuse to authorities. Each registrant is responsible for becoming fully aware of all statutes which pertain to the conduct of his or her professional practice.

(d) Assessments.

(1) Registrants make every effort possible to promote the client's non-offending behavior while at the same time, acting in the best interest of the client, so long as others are not placed at identifiable risk. They guard against the misuse of assessment data. They respect their client's rights to know the results, the interpretations made, and the basis for the conclusions and recommendations drawn from such assessments. They endeavor to ensure that the assessment

and reports they provide are used appropriately by others as well. Reports are written in such a way to communicate clearly to the recipient of the report.

(2) Unless the client agrees to an exception in advance, each registrant respects the right of the client to have a complete explanation, in language which the client is able to understand, of the nature and purpose of the methodologies, and any foreseeable (side) effects of the assessment.

(3) Each registrant will obtain voluntary informed consent, in written form, from a client prior to conducting a physiological assessment or engaging in treatment. In cases where a question exists regarding the appropriateness of administering a test to a particular client, the registrant shall seek expert guidance from a competent medical and/or psychological authority prior to testing.

(4) In court-ordered evaluations, the client should be informed of his rights as a client, including his rights of confidentiality.

(5) The responsible use of assessment measures is of paramount concern and a serious responsibility of each registrant. Assessments regarding a person's degree of sexual dangerousness, suitability for treatment, or other forensic referral questions shall not be determined solely on the basis of a Phallometric assessment. Rather, such data must be properly integrated within a comprehensive assessment, the components of which are determined by a person who has specific training and expertise in making such assessments.

(6) An assessment should not be used to confirm or deny whether an event or crime has taken place.

(7) In reporting assessment results, registrants indicate any reservations that might exist regarding validity or reliability because of the circumstances of the assessment or the absence of comparative norms for the person being tested. Each registrant endeavors to ensure that assessment results and interpretations are not misunderstood or misused by others. Proper qualifications will be made with regard to prediction and "generalizability of data" issues, in order to not mislead the consumer of the report.

(8) Since it is not within the professional competence of registrants to offer conclusions on matters of law, unless they are trained to do so, they should resist pressure to offer such conclusions (e.g., while it would be appropriate to address an issue regarding the probability of a client committing certain criminal acts within a certain period of time, it would be inappropriate to state that "an individual is too dangerous to be released").

(9) Each registrant should be very cautious in offering predictions of criminal behavior for use in imprisoning or releasing individuals. If a registrant decided that it is appropriate, on the basis of a thorough evaluation in a given case, to offer a prediction of criminal behavior, he or she should specify clearly:

(A) the acts being predicted;

(B) the estimated probability that these acts will occur during a given period of time; and

(C) the facts and data on which these predictive judgments are based.

(10) Each registrant should be thoroughly familiar with the assessment or treatment procedures and data used by another registrant before providing any public comment or testimony pertaining to the validity, reliability, or accuracy of such information.

(11) Each registrant will safeguard sexual arousal assessment testing and treatment materials. Each registrant will recognize

the sensitivity of this material and use it only for the purpose for which it is intended in a controlled Phallometric laboratory assessment. Registrants will not make such materials available to persons who lack proper training and credentials, or who would misinterpret or improperly use such stimulus materials.

(e) Professional Relationships.

(1) Each registrant will refrain from knowingly offering treatment services to a client who is in treatment with another professional without initially consulting with the professionals involved.

(2) Each registrant will act with proper regard for the needs, special competencies, and perspectives of not only colleagues who treat sex offenders but other professionals as well.

(3) Each registrant is encouraged to affiliate with professional groups, clinics, or agencies operating in the assessment and treatment of sex offenders. Similarly, interdisciplinary contact and cooperation is encouraged.

(f) Research and Publications.

(1) Each registrant is obligated to protect the welfare of his or her research subjects. Provisions of the "human subjects experimental policy" shall prevail as specified by the United States Department of Health, Education and Welfare guidelines.

(2) Each registrant will carefully evaluate the ethical implications of possible research and has full responsibility to ensure that ethical practices are enforced in conducting such research.

(3) The practice of informed consent person prevails. The research participant shall have full freedom to decline to participate in or withdraw from the research at any time without any prejudicial consequences.

(4) The research subject shall be protected from physical and mental discomfort, harm, and danger that may result from research procedures to the greatest degree possible.

(5) Publication credit is assigned to those who have contributed to a publication in proportion to their contribution, and in accordance with customary publication practices.

(g) Public Information and Advertising. All professional presentations to the public will be governed by the following standards on public information and advertising.

(1) General Principles: The practice of assessment and treatment of the sex offender exists for the public welfare. Therefore, it is appropriate for registrants to inform the public of the availability of services. However, much needs to be done to educate the public as to the services available from qualified persons who engage in the assessment and treatment of sex offenders. Therefore, registrants have a responsibility to the public to engage in appropriate informational activities and avoid misrepresentation or misleading statements in keeping with the following general principles and specific regulations: selection of a registrant by a prospective client should be made on an informed basis. Advice and recommendations of third parties, such as community corrections officers, attorneys, physicians, other professionals, relatives or friends, as well as responses to restrained publicity, may be helpful. Advertisements and public communications, whether in directories, announcement cards, newspapers or on radio or television, should be formulated to convey accurate information which is necessary to make an appropriate selection. Self-praising and testimonials should be avoided. Information that may be helpful in some situations would include the following:

(A) office information such as name, including a group name and names of professional associates, address, telephone number, credit card acceptability, languages spoken and written, and office hours;

(B) only earned degrees from an accredited college or university, state licensure and/or other certification, professional certification or affiliation;

(C) description of practice, including the statement that a practice is limited to the assessment or treatment of sex offenders (if appropriate); and

(D) professional fee information.

(2) The proper motivation for community publicity by members who are engaged in the assessment and treatment of sex offenders lies in the need to inform the public of the availability of competent professionals. The public benefit derived from advertising depends upon the usefulness and accuracy of the information provided to the community to which it is directed.

(3) The regulation of public statements by registrants is rooted in the public interest. Public statements through which a registrant seeks business by use of extravagant or brash statements or appeals to fears could mislead or harm the lay person. Furthermore, public communications that would produce unrealistic expectations in particular cases and would bring about a lack of confidence in the profession, would be harmful to the community. The therapist-client relationship is personal and unique and should not be established as the result of pressures, deception or exploitation of the vulnerability of clients.

(4) The name under which a registrant conducts his or her practice may be a factor in the selection process. Use of a name or credentials which could mislead referral sources or lay persons is improper. Likewise, a registrant should not hold oneself out as being a partner or associate of any agency or firm if he is, in fact, not acting in that capacity (e.g., a person engaged in private practice who is also employed at a state hospital should make it clear to a prospective client in private practice that he is not acting on behalf of a state hospital).

(5) In order to avoid the possibility of misleading persons with whom he or she deals, a registrant should be scrupulous in the representation of his or her professional background, training and status. Each registrant must indicate, if it is accurate, any limitations in his or her practice (e.g., an ASOTP should specify that he/she must operate under the supervision of a RSOTP).

(6) Registrants shall not represent their affiliation with any organization or agency in a manner which falsely implies sponsorship or certification by that organization.

(7) Registrants shall not knowingly make a representation about his or her ability, background, or experience, or about that of a partner or associate, or about a fee or any other aspect of a proposed professional engagement that is false, fraudulent, misleading, or deceptive. A false, fraudulent, misleading, or deceptive statement or claim is defined as a statement or claim which:

(A) contains a material misrepresentation of fact;

(B) omits any material or statement of fact which is necessary to make the statement, in light of all circumstances, not misleading; or

(C) is intended or likely to create an unjustified expectation concerning the registrant, or services.

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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Collier M. Cole, Ph.D.

Chairperson

Council on sex Offender Treatment

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

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 1. Texas Board of Health

##### Subchapter S. Requests for Providing Public Information

The Texas Department of Health (department) adopts the repeal of §§1.251-1.255 and new §1.251, concerning procedures for handling requests for public information, without changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4178), and therefore the sections will not be republished.

Specifically the new section describes how the department will handle requests for public information under the Public Information Act, Government Code, Chapter 552 (Act). The repeal is necessary because some of the existing language is replaced by or clarified in new §1.251 and other existing language has been moved into the department's written policy on charges for records under the Act. Until September 1, 1997, §552.2611 of the Act required that charges for public records by a state agency be specified in rules. That section was repealed by Acts 1997, 75th Legislature (House Bill 951); therefore, the department's rules on charges are no longer required and charges may be addressed adequately through department policy.

The new section complies with Acts 1997, 75th Legislature, (House Bill 951), which amended the Government Code, Chapter 552 relating to costs of copies when responding to requests for public information.

The section allows the department to honor verbal requests for public information under special circumstances. The section requires that the program handling the request have the records ready for inspection or copies duplicated within 10 business days after the date the department received the request. It explains the compulsory actions to be taken if the program is unable to meet this requirement. It explains that the department has set forth in its operating procedure the terms under which it requires a deposit and prepayment for public information requested. The section establishes that when prepayment is required, that failure of the requestor to pay the costs of the copies within the time limitation set by the program is deemed a withdrawal of the request for information.

No public comments were received on the proposed repeal of §§1.251-1.255 and proposed new §1.251.

## 25 TAC §§1.251-1.255

The repeal is adopted under the Public Information Act, Government Code, Chapter 552, relating to requests for public information and the Health and Safety Code, §12.001, which provides the Board of Health (board) with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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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Susan K. Steeg

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## 25 TAC §1.251

The new section is adopted under the Public Information Act, Government Code, Chapter 552, relating to requests for public information and the Health and Safety Code, §12.001, which provides the Board of Health (board) with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 91. Cancer

The Texas Department of Health (department) adopts the repeal of §§91.1 - 91.7 and new §§91.1 - 91.14, concerning reporting of cancer and other precancerous or tumorous disease incidence data to the department or its authorized representatives. Sections 91.1 - 91.5, 91.7 - 91.9, 91.11, and 91.13 are adopted with changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1467). Sections 91.6, 91.10, 91.12, and 91.14 and the repealed §§91.1-91.7 are adopted without changes, and therefore the sections will not be republished.

The repeal is necessary to delete obsolete requirements and provisions. The new sections are needed to implement Health and Safety Code, Chapter 82 (the Cancer Incidence Reporting Act) and to meet requirements of a grant funded by the United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) which provides for the support of a statewide population-based cancer registry that

meets standards for completeness, timeliness, and quality of cancer registry data. Enforcement of these sections will result in the availability of timely, statewide cancer incidence data for use in cancer prevention and control efforts in the State.

The department is making the following changes due to staff comments and to verbal comments from the same organizations which submitted written comments, to clarify the intent and improve the accuracy of the section.

Change: Concerning §91.1, the department deleted the word "to" in reference to participation in the national program of cancer registries.

Change: Concerning §91.1, the department added "these sections" and deleted "this section".

Change: Concerning §91.2, in the definition of Quality control, the department replaced the word "control" with "assurance" in reference to quality assurance of information.

Change: Concerning §§91.4(b)(2)(C) and 91.11(b), the department replaced the word "control" with "assurance" in reference to quality assurance of information.

Change: Concerning §91.3 and §91.8(a), the department changed the section title from "Who Shall Report" to "Who Reports".

Change: Concerning deletion of §91.3(g), the department divided this into subsection (e) to clarify who shall report and who should report which now reads "All hospitals, cancer treatment centers and clinical laboratories providing diagnosis or treatment services to patients with cancer shall grant the department or its authorized representative access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment of cancer, or medical status of any identified cancer patient."; and subsection (f) which now reads "All physicians, ambulatory surgical centers, outpatient clinics, nursing homes, hospices, and other facilities, individuals or agencies providing diagnosis or treatment services to patients with cancer should grant the department or its authorized representative access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment or medical status of any identified cancer patient."

Change: Concerning §91.5, the department changed "are to" to "shall" and added a sentence which clarifies timely reporting.

Change: Concerning §91.5(b), the department changed "should" to "shall" for consistency within sections.

Change: Concerning §91.7, the department combined subsections (a) and (b) into (a) and added the phrase "designated to receive data from" for clarification of "where to report" forms. Subsection (c) was changed to subsection (b).

Change: Concerning §91.9, the department moved the phrase "ambulatory surgery center" and changed the word "surgery" to read "surgical" to be consistent with the definition for ambulatory surgical centers.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting changes.

Comment: Concerning §91.3, one commenter questioned the department's authority to require the reporting of required cancer data from ambulatory surgical centers, physicians or other health professionals. The commenter suggested that

the department delete the reporting requirements for these professionals and facilities.

Response: The department agrees with the commenter in that Texas Health and Safety Code §82.008 only specifies that each hospital, cancer treatment center and clinical laboratory shall report and has modified §91.3(c) to change "shall" report to "should" report, deleted "ambulatory surgical center" from §91.3(a) and added "each ambulatory surgical center" to §91.3(c). For completeness of cancer data, the department strongly recommends the reporting of cancer information by ambulatory surgical centers, physicians or other health professionals for patients that are not diagnosed or treated elsewhere.

Comment: Concerning §91.3(e) and (f), two commenters noted that the department could assess reporting costs, late fees, legal and other associated enforcement costs against hospitals, facilities and individuals failing to report the required data but questioned the department's statutory authority to assess penalties and to award attorney's fees and costs, noting that the current law and rules contain a reimbursement provision for reporting of data based on the availability of funds. One commenter stated "the current rules provide a positive mechanism for assuring compliance, where the proposed rules provide a punitive method for collecting cancer data." This commenter further stated that the proposed rules represent an abrupt change from a reimbursed, voluntary reporting system to a mandatory reporting system with a cost-recovery method to access cancer information from facilities failing to report. One of the commenters stated "If the legislature's appropriations to the registry are inadequate, the department should apply the federal grant funds it receives to cover the remaining costs of data collection."

Response: The department agrees in part and disagrees in part with the commenters. Health and Safety Code Chapter 82 and §91.4 of the current rules do provide for a reasonable amount for compensation to facilities for data collection and reporting, within the limits of funds appropriated expressly for that purpose. Since September, 1987, no such funds have been appropriated for this data collection and reporting. The department disagrees with the commenter regarding the department's statutory authority to recover costs for collection of unreported data and the assessment of fees. §§12.031-12.032 provide the Texas Board of Health with the authority to charge fees for public health services. A fee is not punitive and only cost is recovered. In addition, although the legal provision existed to reimburse facilities for reporting, upon the availability of funds, the reporting system was mandated by the Cancer Incidence Reporting Act (Chapter 82) and is not a voluntary system. In reference to applying federal grant funds for data collection, the monies awarded by the CDC are designated for enhancement of the registry infrastructure and not for on-going data collection. No changes were made in the proposed rules as a result of these comments.

Comment: Concerning §91.3, one commenter stated "the department should coordinate its reporting requirements with those of the American College of Surgeons (ACoS) to facilitate the reporting process for hospitals, cancer treatment centers and clinical laboratories.

Response: The department agrees in part and disagrees in part. We do coordinate reporting to the extent possible, however; not all reporting facilities are ACoS accredited. We will continue to work with ACoS, the Commission on Cancer

and providers to assure complete reporting. No changes were made as a result of this comment.

Comment: Concerning §91.3, one commenter stated that the impact of the extensive data collection has been seriously underestimated and that the real burden will fall on Texas physicians, clinical laboratories and hospitals as a result of these rules.

Response: The department agrees in part with the commenter. Physicians are not required to report under changes made to the proposed rules. The legislature has determined that reporting is mandatory for hospitals, cancer treatment centers and clinical laboratories without provision of funds for reimbursement. No additional changes were made as a result of this comment.

Comment: Concerning §91.4, one commenter stated that she was "unclear as to what the department hopes to gain above and beyond the ICD-9-CM coding system which was created for statistical purposes."

Response: The department disagrees with the commenter. For the purposes of the Cancer Registry, the ICD-9-CM codes are insufficient and additional information is needed to adequately classify a cancer case. No changes were made in the proposed rules as a result of this comment.

Comment: Concerning §91.3, three commenters stated that the number of people and/or institutions required to report is overly broad and will result in multiple and repeated reporting from consecutive providers of care. One commenter stated that "the department should revise the proposed amendments to determine a single responsible party for the one-time reporting of cancer cases".

Response: The department disagrees with the commenters. It is impossible to identify a single source for reporting because significant unique pieces of cancer information are received from each reporter. These pieces of information are combined to make a complete cancer case. No changes were made in the proposed rules as a result of these comments.

Comment: Concerning §91.4, three commenters stated that the amount of information proposed to be collected is too extensive. One of the commenters stated that the collection of text documentation to support coded information for morphology, primary site, stage and treatment and collection of four data items (reason for no surgery, reason for no radiation therapy; reason for no chemotherapy; and reason for no hormonal therapy) would be difficult to ascertain and code and double the amount of time currently required to code a medical record. This commenter stated that for larger institutions where data quality is an integral part of daily operations, the collection and submission of text data fails to improve or validate quality. Another commenter stated that for the reporting of patient race, Spanish ethnicity and birthplace, many hospitals, clinical laboratories and cancer treatment centers currently do not collect this information from patients or would feel uncomfortable doing so. This commenter stated that these data elements should be deleted or in the alternative reported "to the extent such information is available from the medical record."

Response: The department agrees with the commenters and has amended §91.4(b)(1)(B), (E) and (F) of the final rules.

Comment: Concerning §91.4, two commenters stated that with the mandatory reporting of the designated data fields, additional staff must be devoted to cancer data reporting. One of the

commenters stated that "these costs will easily exceed the \$7 per case reported and 30 minute reporting times, resulting in massive financial and administrative burden on Texas health care providers and facilities".

Response: The department agrees in part and disagrees in part with the commenters. Section 91.4 was changed to reduce the number of required reportable data items. In reference to cost, these estimates were derived from our own experience and represent what the department felt was reasonable.

Comment: Concerning §91.8, two commenters stated that compliance and notification issues may not be sufficiently addressed in the proposed rules. Particular concerns of these commenters were: the steps to be followed if a provider fails to submit data; whether the provider will be given an opportunity to comply prior to the department collecting the data; the amount of time for notification prior to the department's arrival; the process and time frame for the department to review the provider's medical records; and, if approved, how the department intends to notify providers of the new rules.

Response: The department agrees with the commenters and to address these issues has changed the existing §91.8 to become subsection (a), added §91.8(b), changed §91.3(e) and (f) and moved them to become §91.8(c) and (d), respectively. Providers who shall report will be notified of the new rules by mail and the rules will be posted on the Cancer Registry's website.

Comment: Concerning §91.10, two commenters expressed concerns about protecting patient confidentiality. These comments included what steps will be taken by the department to protect patient confidentiality and how new federal recommendations regarding confidentiality of individually identifiable health information will affect these data.

Response: The department disagrees with the commenters. Federal standards on the confidentiality of medical records are not yet final. However, the department believes the protections now afforded the registry data is adequate. No changes were made as a result of these comments.

The comments on the proposed rules were submitted by six groups: the Texas Hospital Association, the Texas Medical Association, Baylor Health Care System, M. D. Anderson Cancer Center, Physician Reliance Network and Summit Hospital. The commenters were generally in favor of the proposed rules but requested a delay in their adoption to allow for further discussion of sections of concern. The department staff met with representatives of the commenters and discussed on several occasions the rules via telephone and telephone conference calls. Comments were also submitted by, and minor errors corrected by the department's staff.

## Subchapter A. Cancer Registry

### 25 TAC §§91.1-91.7

The repeal is adopted under Health and Safety Code §82.006 which provides the department with the authority to adopt rules necessary to implement Chapter 82 (Cancer Registry); §81.004 which provides the Texas Board of Health (board) with the authority to administer Chapter 81 for protecting the public's health and preventing the introduction of disease in the state; §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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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Susan K. Steeg

General Counsel

Texas Department of Health

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### 25 TAC §§91.1-91.14

The new sections are adopted under Health and Safety Code §82.006 which provides the department with the authority to adopt rules necessary to implement Chapter 82 (Cancer Registry); §81.004 which provides the Texas Board of Health with the authority to administer Chapter 81 for protecting the public's health and preventing the introduction of disease in the state; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health; and §§12.031-12.032 which provides the Texas Board of Health with the authority to charge fees for public health services.

#### §91.1. Purpose.

These sections implement the Texas Cancer Incidence Reporting Act, Health and Safety Code, Chapter 82, which authorizes the Texas Board of Health to adopt rules concerning the reporting of cases of precancerous and tumorous diseases and cancer for the recognition, prevention, cure, or control of those diseases, and facilitate participation in the national program of cancer registries established by 42 United States Code §§280e to 280e-4. Nothing in these sections shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with cancer to maintain their own facility based tumor registries.

#### §91.2. Definitions.

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

- (1) Act - The Texas Cancer Incidence Reporting Act, Texas Health and Safety Code, Chapter 82.
- (2) Ambulatory surgical center - A facility licensed under the Texas Health and Safety Code, Chapter 243.
- (3) Board - Texas Board of Health.
- (4) Cancer - Includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal; and malignant neoplasm.
- (5) Cancer reporting handbook - The division's manual for cancer reporters which documents reporting procedures and format.
- (6) Cancer treatment center - A special health facility devoted to the study, prevention, diagnosis, and treatment of neoplastic and allied diseases.

(7) Clinical laboratory - An accredited facility in which tests are performed identifying findings of anatomical changes; and specimens are interpreted and pathological diagnoses are made.

(8) Department - Texas Department of Health.

(9) Division - Cancer Registry Division.

(10) Health care provider - A physician, hospital, outpatient clinic, nursing home and all other facilities, individuals, or agencies providing diagnostic or treatment services to patients with cancer.

(11) Health professional - An individual whose vocation or profession is directly or indirectly related to the maintenance of the health of another individual and duties that require a specified amount of formal education and may require a special examination, certification, or license or membership in a regional or national association.

(12) Hospital - A general or special hospital licensed under Health and Safety Code, Chapter 241 (Texas Hospital Licensing Law); The University of Texas System Cancer Center.

(13) Personal data - Information that includes items which may identify an individual.

(14) Physician - A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

(15) Precancerous disease - Abnormality of development and organization of adult cells; a condition of early cancer, without invasion of neighboring tissue.

(16) Quality assurance - Operational procedures by which the accuracy, completeness, and timeliness of the information reported to the department can be determined and verified.

(17) Regional cancer registry - The organization authorized to receive and collect cancer data for a designated area of the state and which maintains the system by which the collected information is reported to the department.

(18) Regional director - The physician who is the chief administrative officer of a public health region and is designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, §121.007.

(19) Report - Information that is to be provided to the department; the notification to the appropriate authority of the occupancy of a specific cancer or tumorous disease in a person, including all information required to be provided to the department.

(20) Statistical data - Aggregate presentation of individual records on cancer cases excluding patient identifying information.

(21) Texas Cancer Registry - The cancer incidence reporting system administered by the Cancer Registry Division.

(22) Tumorous disease - A new growth of tissue in which the multiplication of cells is uncontrolled and progressive, also called neoplasm; a swelling, enlargement, or abnormal mass, either benign or malignant, which performs no useful functions.

#### §91.3. Who Reports.

(a) Each hospital or cancer treatment center shall report to the department, by methods specified in §§91.4-91.7 of this title (relating to Cancer Registry) required data from each medical record in its custody or under its control of cases of cancer or those precancerous or tumorous diseases specified by the board in §91.4 of this title (relating to What to Report).

(b) Each clinical laboratory shall report to the department, by methods specified in §91.6 of this title (relating to How to Report) required data from each medical record in its custody or under its control of cases of cancer or those precancerous or tumorous disease specified by the board in §91.4 of this title, except for cases reported or to be reported by subsection (a) of this section.

(c) Each ambulatory surgical center, physician or other health professional should report to the department, by methods specified in §91.6 of this title, required data from each medical record in his or her custody or under his or her control of cases of cancer or those precancerous or tumorous diseases specified by the board in §91.4 of this title, except for cases reported or to be reported by subsection (a) of this section.

(d) The department will furnish on request to each health care provider within the state requisite forms to be completed on all cancer cases.

(e) All hospitals, cancer treatment centers, and clinical laboratories providing diagnosis or treatment services to patients with cancer shall grant the department or its authorized representative access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment of cancer, or medical status of any identified cancer patient.

(f) All physicians, ambulatory surgical centers, outpatient clinics, nursing homes, hospices, and other facilities, individuals or agencies providing diagnosis or treatment services to patients with cancer should grant the department or its authorized representative access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment or medical status of any identified cancer patient.

#### §91.4. What to Report.

(a) Reportable conditions.

(1) Cases of cancer or those precancerous or tumorous diseases to be reported to the division are as follows:

(A) all neoplasms with a behavior code of two or three in the most current edition of the International Classification on Diseases for Oncology (ICD-O) with the exception of those designated by the division as non-reportable in the cancer reporting handbook;

(B) all benign and borderline neoplasms of the brain and central nervous system;

(C) cystadenomas of borderline malignancy of ovary (ICDO-2 codes C56.9 and M83801);

(D) hydatiform mole, malignant (ICDO-2 codes C58.9 and M91001); and

(E) any neoplasm specified malignant.

(2) Codes and taxa of the International Classification of Diseases, Ninth Revision, Clinical Modification which correspond to the division's reportable list are specified in the cancer reporting handbook.

(b) Reportable information.

(1) The data required to be produced or furnished shall include, but not be limited to:

(A) name, address, zip code, and county of residence;

(B) date of birth, sex, race and Spanish ethnicity, and birthplace, to the extent such information is available from the medical record;

(C) information on industrial or occupational history, to the extent such information is available from the medical record;

(D) diagnosis including the cancer site, cell type, tumor grade and size, stage of disease, date of diagnosis, and diagnostic confirmation method;

(E) first course of cancer-related treatment, including dates and types of procedures; and

(F) text information to support cancer diagnosis, stage and treatment codes, to be provided by facilities without a documented data quality program such as one approved by the American College of Surgeons.

(2) Each report shall:

(A) be legible and contain all data items required in subsection (b)(1) of this section relating to reporting requirements and complete documentation;

(B) be in a format prescribed by the division;

(C) meet all quality assurance standards utilized by the division;

(D) in the case of individuals who have more than one form of cancer, be submitted separately for each primary cancer or precancerous or tumorous disease diagnosed;

(E) be submitted to the division electronically, or manually if electronic means are unavailable; and

(F) be transported by secure means at all times to protect the confidentiality of the data.

#### §91.5. *When to Report.*

(a) All reports of cases shall be submitted to the department within six months of initial diagnosis or admission at their facility for the diagnosis or treatment of cancer. The following reporting timelines may be followed in lieu of the six months standard: reports for 1996 and 1997 cases may be submitted up to 24 months after initial diagnosis or admission; reports for 1998 and 1999 cases may be submitted up to 18 months after initial diagnosis or admission; reports for year 2000 cases may be submitted up to 12 months after initial diagnosis or admission. Beginning with cases diagnosed in year 2001, all reports must be submitted within six months.

(b) Data shall be submitted at least quarterly; monthly submissions are recommended.

#### §91.7. *Where to Report.*

(a) Forms.

(1) All counties shall be assigned to a designated regional cancer registry of a public health region. Completed forms shall be submitted to the regional director or his designee at the public health region designated to receive data from where the person with cancer or precancerous or tumorous disease is diagnosed or treated.

(2) A map and list of public health regions, and the addresses of respective regional directors are available from the Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199.

(b) All electronic data reports should be submitted to the central office of the division to the Cancer Registry Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

#### §91.8. *Compliance.*

(a) A cancer reporter in accordance with §91.3(a)-(b) of this title (relating to Who Reports) is considered compliant if he/she meets §91.4(a)(1) and (b) of this title (relating to What to Report), §91.5 of this title (relating to When to Report), and §91.6 of this title (relating to How to Report).

(b) A non-compliant reporter will be notified in writing as to his/her non-compliant status within 30 days following the end of the departmental designated quarter and will be given an opportunity to take corrective action within 60 days from the date of the notification letter. A second notification letter will be sent 30 days after the date of the original notification letter if no corrective action has been taken.

(c) If a cancer reporter is non-compliant and takes no corrective action within 60 days of the original notification letter, the department or its authorized representative may access the information from the hospital, cancer treatment center or clinical laboratory and report it in the appropriate format. In these cases, the hospital, cancer treatment center or clinical laboratory shall reimburse the department or the authorized representative for its cost to access and report the information. The hospital, cancer treatment center or clinical laboratory shall be notified at least two weeks in advance before arrival for collection of the information.

(d) Any hospital, cancer treatment center or clinical laboratory which is required to reimburse the department or its authorized representative for the cost to access and report the information pursuant to subsection (c) of this section shall provide payment to the department or its authorized representative within 60 days of the day this payment is demanded. In the event any hospital, cancer treatment center or clinical laboratory fails to make payment to the department or its authorized representative within 60 days of the day the payment is demanded, the department or its authorized representative may, at its discretion, assess a late fee not to exceed one and one-half percent per month of the outstanding balance. Further, in the event that the representative takes legal action to recover costs and any associated fees, and the department or its authorized representative receives a judgement in its favor, the hospital, cancer treatment center or clinical laboratory shall also reimburse the department or its authorized representative for any additional cost incurred to pursue the legal action. Late fees and payment made to the department by hospitals, cancer treatment centers or clinical laboratories pursuant to this subdivision shall be considered as reimbursement of the additional costs incurred by the department.

#### §91.9. *Immunity from Liability.*

The following persons subject to this chapter that act in compliance with this chapter are not civilly or criminally liable for furnishing the information required under this chapter: a hospital, clinical laboratory, or cancer treatment center; or a ambulatory surgical center, physician or other health care provider. Staff of the division that disclose confidential data in the course of their job duties are not civilly or criminally liable for furnishing the information required.

#### §91.11. *Quality Assurance.*

(a) The department shall cooperate and consult with participating health care facilities so that such facilities may provide timely, complete and accurate data. The department will provide:

(1) reporting training, on-site case-finding studies, and reabstracting studies;

(2) quality assurance reports to assure the computerized data utilized for statistical information and data compilation is correct; and

(3) educational information available from the department morbidity and mortality statistics.



(b) The regional cancer registry shall maintain a system of quality assurance in accordance with procedures approved by the department.

§91.13. *Requests and Release of Personal Cancer Data.*

(a) Requests for data.

(1) Requests for personal cancer data shall be in writing and directed to: Texas Department of Health, Committee for Requests for Personal Data, Bureau of Vital Statistics, 1100 West 49th Street, Austin, Texas 78756-3199.

(2) Written requests for personal data shall include the following information and assurances:

(A) name and address of the agency, institution, or firm sponsoring the project;

(B) name, degree(s), title, address, and telephone number of the person who will direct the project;

(C) name and address of the agency, institution, or firm funding the project (if other than that shown in subparagraph (A) of this paragraph);

(D) names, degree(s) and titles of other persons who will have supervisory responsibilities in the project;

(E) specific purpose of the project and a statement of why the disclosure of this information is deemed necessary to accomplish this purpose;

(F) type of data needed and for what years (e.g., cervical cancer incidence, El Paso County, 1990-1995);

(G) action planned;

(H) results expected;

(I) assurances that the following conditions regarding the release of the requested data shall be met:

(i) the data shall be treated as strictly confidential;

(ii) the data shall not be used for any purpose other than that specifically set forth in this subsection and shall not be used for any secondary purpose;

(iii) the data shall not be made available to any other individual agency, institution, or firm;

(iv) no follow back of any type shall be made to any individual, institution, or agency without written authorization by the Texas Department of Health;

(v) any data released by a project shall be restricted to aggregate data and shall not identify any individual or institution;

(vi) the Texas Department of Health shall be given credit as the source of the data;

(vii) a copy of the results of the project shall be furnished to the Texas Department of Health; and

(viii) if electronic media are provided, such media, after serving the purpose set forth in this subsection, shall be erased unless specific authority is requested and granted for their retention and future use;

(J) name and address of person(s) to whom data and billing are to be sent must be provided; and

(K) the release must be signed by the appropriate administrative officer of the sponsoring agency, institution, or firm.

(b) Release of data.

(1) The division may provide reports containing personal data back to the respective reporting health care provider from records previously submitted to the division from each respective reporting entity for the purposes of case management and administrative studies. These reports will not be released to any other entity.

(2) The division may release personal data to other bureaus of the department, provided that the disclosure is required or authorized by law. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.

(3) The division may release personal data to the department's Cancer Registry Program personnel headquartered in public health regions or public health departments to facilitate the collection, editing, and analysis of cancer registry data for the respective geographic area. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.

(4) The division may release personal cancer data to state, federal, local, and other public agencies and organizations in accordance with the standard guidelines for release of personal data as outlined in subsection (a) of this section.

(5) The division may release personal cancer data to private agencies, organizations, and associations in accordance with the standard guidelines for release of personal data as outlined in subsection (a) of this section.

(6) The division may release personal cancer data to any other individual or entities for reasons deemed necessary by the board to carry out the intent of the Cancer Incidence Reporting Act (Health and Safety Code, Chapter 82) and in accordance with the standard guidelines for release of personal data as outlined in subsection (a) of this section.

(7) A person who submits a valid authorization for release of cancer data shall have access to review or obtain copies of the information described in the authorization for release.

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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Susan K. Steeg

General Counsel

Texas Department of Health

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



## Chapter 103. Injury Prevention and Control

### 25 TAC §§103.1-103.4, 103.7, 103.8

The Texas Department of Health (department) adopts amendments to §§103.1 - 103.4 and 103.7 - 103.8 concerning the reporting and control of traumatic brain injuries. Section 103.4 is adopted with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 Tex Reg 4179), as a result of comments received during the 30 day comment pe-

riod. Sections 103.1-103.3 and 103.7-103.8 are adopted without changes, and therefore the sections will not be republished.

These amendments implement Chapter 893 of the 75th Legislature, including traumatic brain injuries as reportable injuries to the department. The amended sections cover purpose; definitions; list of reportable conditions; reporting requirements; confidential nature of case reporting; and investigations.

Specifically, the amendment to §103.1 adds traumatic brain injuries on the list of reportable conditions. The amendment to §103.2 adds three new definitions (health care entity, state trauma registry, and traumatic brain injury) and amends one other (spinal cord injury). The amendment to §103.3 adds traumatic brain injuries to the list of reportable conditions and specifies what the reports of injuries may include. The amendment to §103.4 clarifies the reporting requirements by specifying how submersion, spinal cord and brain injuries are to be reported, by whom, and how often; adds acute or post acute rehabilitation facilities as sentinels for spinal cord and brain injuries; adds language requiring hospitals to report admitted cases of spinal cord and brain injuries to the State Trauma Registry; adds language regarding the department to provide summary data to local and regional health departments; and adds language allowing the department to contact hospitals and rehabilitation facilities regarding suspected cases of reportable injuries. The amendment to §103.7 strengthens the confidential nature of case reporting to include all information and records related to injuries. The amendment to §103.8 adds language that provides for joint investigations of spinal cord injuries and/or brain injuries with the Texas Rehabilitation Commission and Texas Traumatic Brain Injury Advisory Board.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §103.4(e)(5), new language "an acute or post-acute" was added to clarify the type of rehabilitation facilities required to report.

Change: Concerning §103.4(f), new language "acute or post-acute" was added to clarify the type of rehabilitation facilities required to report.

Change: Concerning §103.4(j), new language "acute or post-acute" was added to clarify the type of rehabilitation facilities required to report.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

COMMENT: Concerning §103.3, one commenter did not support the inclusion of patient identifiers in the data set.

RESPONSE: The department responds that the proposed rules do not require the reporting of patient identifiers (i.e., patient's name, address, occupation, and employer) for traumatic brain injury reports sent to the Trauma Registry. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including "patient's social security number" as a required data element for traumatic brain injury reporting.

RESPONSE: The department disagrees with the commenters. The patient's social security number is not needed to determine the scope and magnitude of traumatic brain injuries in the

state. There is concern among hospitals about releasing confidential patient identifiers and this concern will result in lowered reporting coverage. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including "patient's occupation" as a required data element for traumatic brain injury reporting.

RESPONSE: The department disagrees with the commenters. Hospitals cannot easily obtain the patient's occupation and adding this data element will result in lowered reporting coverage. The proposed data elements include information on payor and place of injury which can be used to determine work-relatedness. In addition, ambulance data concerning work-relatedness is collected by the department. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including "address of injury" as a required data element for traumatic brain injury reporting.

RESPONSE: The department disagrees with the commenters. The proposed data elements include county of injury. In addition, ambulance data concerning zip code of injury is collected by the department. The department could conduct an epidemiological investigation to determine specific locations of injuries if warranted. Adding this data element will result in lowered reporting coverage. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including "work-relatedness" as a required data element for traumatic brain injury reporting.

RESPONSE: The department disagrees with the commenters. The proposed data elements already include information on payor and place of injury which can be used to determine work-relatedness. In addition, ambulance data concerning work-relatedness is collected by the department. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested making the following change to the "discharge disposition" data element for traumatic brain injury reporting: "If the discharge is to "Home", add as sub-elements: self care (include address); requires non-skilled assistance (family members, etc.) (include address); requires home health services and/or outpatient rehabilitation (include address)."

RESPONSE: The department responds that the proposed data set includes whether patient's disposition at discharge is self-care or dependant. The department agrees that gathering more detailed disposition data would be useful. However, the department disagrees that data elements should be added at this time because it would delay data collection and reporting. The department disagrees with requiring the reporting of patient address, family member names, family member addresses, and home health services/rehabilitation address since these data elements are not needed for public health surveillance and prevention purposes. Reporting compliance for these data elements would be low due to hospitals' concerns about releasing confidential patient identifiers. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested the following to be added as required data elements for traumatic brain injury reporting: the presence or absence

of intracranial lesion; presence or absence of skull fracture; presence or absence of neurological abnormalities, presence or absence of amnesia; and whether the brain injury was closed head, open head-non-penetrating, or open head-penetrating.

RESPONSE: The department responds that information on skull fracture, intracranial lesion, and open or closed head injury, would be captured through the proposed ICD-9-CM codes for reporting traumatic brain injuries. In addition, penetrating head injuries would be captured through the proposed collection of external cause of injury information (e.g., E-Codes for suicide or homicide attempt by firearm or cutting and piercing instrument). The Centers for Disease Control and Prevention suggests a medical chart review for a sample of these cases to determine the reliability and validity of the assigned ICD-9-CM and E Codes. The department disagrees with collecting data concerning neurological abnormalities or amnesia because these new data elements would require hospitals to hire, train, and pay for the personnel needed to abstract these data and this would lead to reduced reporting coverage. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including whether the injury was related to the use of alcohol or drugs as required data elements for traumatic brain injury reporting.

RESPONSE: The department responds that the proposed data elements already include whether the alcohol level was tested and the alcohol level. Furthermore, the proposed collection of diagnostic codes would capture cases with drug dependence or nondependent drug use. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including the license number, name, and address of nursing homes and residential facilities where patients have been discharged as required data elements for traumatic brain injury reporting.

RESPONSE: The department disagrees. The license number, name, and address of nursing homes and residential facilities are not needed for public health surveillance or prevention purposes. No change was made as a result of this comment.

COMMENT: Concerning §103.3, one commenter requested including whether intracranial monitoring was conducted, the method of monitoring, the intracranial pressure (ICP) levels, and methods used to control the ICP level as required data elements for traumatic brain injury reporting.

RESPONSE: The department responds that the proposed data elements already include data concerning procedures that will capture whether intracranial monitoring was conducted. The department disagrees with adding data elements to require the reporting of method of monitoring, ICP levels, and methods used to control the ICP level. The understanding of intracranial hypertension, its causes and significance continue to be researched. Therefore, the utility of collecting this data for public health surveillance has not been shown. As research develops, special investigations of a sample of patients receiving intracranial monitoring can be conducted. No change was made as a result of this comment.

COMMENT: Concerning §103.3, two commenters requested including the use of safety equipment as a required data element for traumatic brain injury reporting.

RESPONSE: The department responds that the proposed data set already includes this information. No change was made as a result of this comment.

COMMENT: Concerning §103.3, one commenter stated that hospitals do not currently collect and report on traumatic brain injuries. The commenter requested delaying the adoption of the proposed rules and recommended a phase-in period for reporting.

RESPONSE: The department disagrees with the commenter. On August 31, 1996, all hospitals were mandated to electronically report data for major trauma patients to the department as described in Chapter 773 of the Health and Safety Code. Currently, more than 200 hospitals electronically report major trauma patient data to the department. No change was made as a result of this comment.

COMMENT: Concerning §103.4(e)(4), two commenters requested to add the words "or treats" to a hospital that admits a patient with a traumatic brain injury' as reportable.

RESPONSE: The department disagrees. There is currently not a mechanism in place for the reporting of emergency department data. The creation of such a mechanism would require hospitals to hire, train, and pay for the personnel needed to abstract data and result in reduced reporting coverage. No change was made as a result of this comment.

Commenters were: an individual trauma surgeon in favor of the rule amendments; Memorial Hermann Healthcare System supports the rule amendments; Texas Trauma Coordinators Forum supports the rules with the exception of reporting patient identifiers; Texas Traumatic Brain Injury Advisory Board was generally in favor of the rules, but requested adding new data elements and expanding the scope of traumatic brain injury reporting to include emergency rooms; Brain Injury Association of Texas was generally in favor of the rules, but requested adding new data elements and expanding the scope of traumatic brain injury reporting to include emergency rooms; the Texas Hospital Association requested a more flexible reporting process, a phase-in period, and requested a delay in the adoption of the rule.

The amendments are adopted under the Health and Safety Code, §92.002, which requires the board to adopt rules necessary to implement the reporting of injuries; and §12.001 which allows the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

#### §103.4. Reporting Requirements.

(a) The following persons or their designees shall report in writing within ten working days all newly diagnosed cases or suspected cases of submersion injuries to the local health authority, or where there is no local health authority, the regional health authority:

(1) a physician who diagnoses or treats a reportable injury or a suspected case of a reportable injury;

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

(b) The reporting physician, medical examiner, or justice of the peace shall make the submersion report in writing on a form or forms prescribed by the Texas Department of Health (department).

(c) A local health authority or regional health authority shall transmit any reports of submersion injuries to the Bureau of

Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, on a weekly basis.

(d) Transmission of submersion reports shall be made by mail, courier, or electronic transfer.

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

(e) The following entities or their designees shall report all newly diagnosed cases or suspected cases of spinal cord injuries and traumatic brain injuries to the department:

(1) a physician who diagnoses or treats a spinal cord injury or a traumatic brain injury or a suspected case of a spinal cord injury or a traumatic brain injury;

(2) a medical examiner;

(3) justice of the peace;

(4) a hospital that admits a patient with a spinal cord injury or a traumatic brain injury or a suspected case of a spinal cord injury or a traumatic brain injury; or

(5) an acute or post - acute rehabilitation facility that admits or treats a patient with a spinal cord injury or a traumatic brain injury or a suspected case of a spinal cord injury or a traumatic brain injury.

(f) The reporting physician, medical examiner, justice of the peace, or acute or post - acute rehabilitation facility shall make the spinal cord injury report or the traumatic brain injury report (excluding reports of traumatic brain injuries caused by anoxia due to near drowning) in writing on a form or forms prescribed by the department within ten working days. A physician shall be exempt from reporting if a hospital admitted the patient and fulfilled the reporting requirements as stated in subsection (g) of this section.

(g) The reporting hospital shall report the spinal cord injury or the traumatic brain injury (excluding traumatic brain injuries caused by anoxia due to near drowning) through electronic transmission via modem to the department's State Trauma Registry on at least a quarterly basis as described in Chapter 773 of the Health and Safety Code.

(h) All entities listed in subsection (e)(1)-(5) of this section shall report a traumatic brain injury caused by anoxia due to near drowning as a submersion injury in the manner described in subsections (a)-(d) of this section.

(i) The department shall provide annual summary data to the local and regional health authorities.

(j) The department may contact a medical examiner, justice of the peace, physician, hospital, or acute or post - acute rehabilitation facility attending a person with a case or suspected case of a reportable injury.

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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Susan K. Steeg

General Counsel

Texas Department of Health

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

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Chapter 169. Zoonosis Control

Subchapter C. Training of Animal Shelter Personnel

**25 TAC §§169.61-169.65**

The Texas Department of Health (department) adopts amendments to §§169.61-169.65 concerning the training of animal shelter personnel, without changes to the proposed text published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4181), and therefore the sections will not be republished.

Specifically, the sections cover the purpose of the sections, definitions, types of courses, prerequisites for course attendance, and course content. The amendments define the terms "satisfactory completion," and "animal control officer (ACO) course," delete definitions either for clarification or because they were already provided in the associated statute, describe the basic, advanced, and administrative ACO courses, modify the prerequisites for course attendance, and list the content of courses.

No comments were received concerning the proposed rules during the comment period.

The amendments are adopted under the Texas Health and Safety Code, Chapter 823, "Animal Shelters," §823.004, which provides the Texas Board of Health (board) with the authority to prescribe standards for training animal shelter personnel in animal health and disease control, humane care and treatment of animals, control of animals in an animal shelter, and transportation of animals; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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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Susan K. Steeg

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Texas Department of Health

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

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Chapter 181. Vital Statistics

Subchapter A. Miscellaneous Provisions

**25 TAC §181.9, §181.9**

The Texas Department of Health (department) adopts amendments to §181.8 and §181.9 concerning supplemental birth certificates and access to paternity files without changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4183), and therefore the sections will not be republished.

The sections are amended to revise and eliminate the word "legitimation" since the statutes no longer use this word and update rule language concerning creation of a supplemental certificate of birth based on paternity determination. In addition, the rule directs the Bureau of Vital Statistics to notify the Office of the Attorney General, the Title IV-D agency for the State of Texas, of any supplemental birth records based on paternity.

No comments were received during the comment period on the proposed amendment.

The amendments are adopted under the Health and Safety Code, §191.003, which provides the Board of Health (board) with the authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; §192.006 which provides that supplemental birth certificates shall be prepared and filed in accordance with board rules; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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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Susan K. Steeg

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## Subchapter B. Vital Records

### 25 TAC §181.30

The Texas Department of Health (department) adopts new §181.30 concerning instructions and requirements for filing amendments to medical certification of certificate of death with a local registrar before submission to the department without changes to the proposed text as published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 4183), and therefore the new section will not be republished.

The new rule provides the instructions and requirements for filing amendments with a local registrar. In addition, the rule incorporates the time limit for the local registrar to forward the properly filed medical amendment to the state registrar within ten days of filing. This will aid in getting the medical amendment filed timely.

The new rule will allow the decedent's family members and funeral homes the ability to purchase amended certified copies of death certificates used in the application for insurance benefits, settlement of pension claims, and transfer of title of real and personal property.

The following comments were received concerning the proposed rule.

Comment: A commenter strongly recommended that the medical amendment be filed with the local registrar to speed up the process of getting copies of amended certificates.

Response: The department agrees with the commenter.

Comment: Concerning the procedure, a commenter asked if the current form would be revised and about the correct procedure for issuing the amended copy including additional fee if applicable. The answers to these questions were verbally communicated to the commenter. As a result of this communication, the commenter recommended this procedure.

Response: The department will revise the form to include the local registrar's file number, file date and signature of local registrar. The department agrees with the commenter especially since no additional fees are applicable.

The first comment received from Forest Park Funeral Home, Houston, Texas was strongly in favor of the rule. The second commenter, Joy Streater, Local Registrar, Comal County was in favor of the rule after receiving a verbal explanation of the procedural process.

The new section is adopted under authority of the Health and Safety Code, §191.003, which provides the Board of Health (board) with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics, and §191.028 which provides for filing amendments to certificates; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 289. Radiation Control

### Subchapter E. Registration

#### 25 TAC §289.230

The Texas Department of Health (department) adopts an amendment to §289.230 concerning accreditation and certification of mammography systems, with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4184), as a result of comments received during the 30-day comment period.

The amendment to §289.230 incorporates changes to requirements on state certification, inspections, and violations as the result of House Bill 1534, 75th Texas Legislature, and new requirements to enable the department to become an accreditation body in accordance with the federal Mammography Quality Standards Act (MQSA). The revision includes new definitions supporting accreditation and accreditation fees. The amendment will give registrants an option of obtaining accreditation through the state instead of the American College of Radiology (ACR). Requirements for technologists and continuing education requirements for medical physicists performing surveys on mammography equipment to comply with federal standards

have been added. Other minor grammatical changes were made to the section.

The department is making the following changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §289.230(b)(1), the department changed "accrediting" to "accreditation" to be consistent with the United States Food and Drug Administration (FDA) rules.

Change: Concerning §289.230(b)(3), the department deleted the definition of "Agency" because it currently exists in §289.201 of this title and registrants who must comply with this section are also required to comply with §289.201 of this title.

Change: Concerning §289.230(b)(9), the department deleted the definition of "Certificate of Registration" because it currently exists in §289.201 of this title and registrants who must comply with this section are also required to comply with §289.201 of this title.

Change: Concerning §289.230(b)(18), the department changed "which" to "that" for correct grammar. Change is reflected in renumbered §289.230(b)(16).

Change: Concerning §289.230(b)(27)(F), the department changed "adopted by" to "of" for consistency with other sections of this title. Change is reflected in renumbered §289.230(b)(25)(F).

Change: Concerning §289.230(b)(36), the department deleted the definition of "Physician" because it currently exists in §289.201 of this title and registrants who must comply with this section are also required to comply with §289.201 of this title.

Change: Concerning §289.230(b)(38)(D), the department changed "over" to "more than" to clarify the intent of the rule. Change is reflected in renumbered §289.230(b)(35)(D).

Change: Concerning §289.230(b)(38)(E), the department changed "over" to "more than" to clarify the intent of the rule. Change is reflected in renumbered §289.230(b)(35)(E).

Change: Concerning §289.230(b), due to the deletion of §289.230(b)(3), (9), and (36), the department renumbered subsequent paragraphs and the figure reference. Change is reflected in §289.230(b)(3)-(42) and Figure: 25 TAC §289.230(b)(31).

Change: Concerning §289.230(c), the department added language to exempt mammography registrants from radiation protection program requirements. Change is reflected in §289.230(c)(5).

Change: Concerning §289.230(c)(3), the department added the word "facility's" to clarify the specific operating and safety procedures intended.

Change: Concerning §289.230(d)(1)(B), the department added the word "otherwise" in the second sentence for clarification. In addition, in the fourth sentence, the words "has shown to be in tolerance, and" were deleted and replaced with "meets the requirements of clause (i) of this subparagraph" to more clearly state the intent of the requirement. The fourth sentence was also divided into two sentences for easier reading.

Change: Concerning §289.230(d)(1)(D)(iii), the department changed "transferred" to "forwarded" to be grammatically consistent with language in the first sentence of this clause and the

word "will" was replaced with "shall" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(d)(2)(A)(iii), the department changed "interpretation of" to "interpreting" to be grammatically consistent with language in this subclause.

Change: Concerning §289.230(d)(2)(A)(iii)(I), the department added the words "as a qualified interpreting physician" to clarify the intent of the requirement.

Change: Concerning §289.230(d)(2)(A)(iv)(I), the department changed "interpretation of" to "interpreting" to be grammatically consistent with language in this subclause.

Change: Concerning §289.230(d)(2)(A)(iv)(II), the department changed "participation" to "participating" to be grammatically consistent with language in this subclause.

Change: Concerning §289.230(d)(2)(B), the department added language to clarify that operators of equipment who were qualified prior to August 10, 1998, in accordance with this section, meet the new requirements.

Change: Concerning §289.230(d)(2)(C), the department replaced the words "these regulations" with "this section" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(d)(3)(C)(i), the department added the words "(excluding personnel)" to clarify that a survey of personnel qualifications is not the medical physicist's responsibility.

Change: Concerning §289.230(d)(7), the department deleted the last sentence to reflect the addition of §289.230(c)(5).

Change: Concerning §289.230(d)(8), the department changed the word "limitation" to "limits" to reflect appropriate terminology.

Change: Concerning §289.230(e)(1)(A), the department replaced the word "must" with "shall" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(e)(1)(C), the department replaced the word "must" with "shall" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(f)(3), in the last sentence, the department replaced the word "accrediting" with "accreditation" to be consistent with language in the definition of "accreditation body".

Change: Concerning §289.230(i)(3)(B), in the second sentence, the department replaced the words "the regulations must" with "this section shall" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(i)(3)(C), in the second sentence, the department replaced the words "the regulations must" with "this section shall" and, in the fourth sentence, the words "will be required to" were replaced with "shall" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(o)(4), the department replaced the word "chapter" with "section" and "section" with "chapter" to reflect the intent of the paragraph.

Change: Concerning §289.230(o)(5), the department replaced the word "must" with "shall" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(o)(7)(A), the department replaced the word "department's" with "agency's" for consistency with the rest of the section and with other sections of this title.

Change: Concerning §289.230(p)(1), the department replaced the word "must" with "shall" for consistency with the rest of the section and with other sections of this title and also changed "accrediting" to "accreditation" to be consistent with language in the definition of "accreditation body".

Change: Concerning §289.230(p)(2), the department added the words "in accordance with" for clarification.

Change: Concerning §289.230(q)(3), the department added "mailed or" after "payments may be" in the second sentence for clarification. The department also deleted "or mailed to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas" from the end of the second sentence to avoid repeated language.

Change: Concerning §289.230(w)(2), twice the department replaced the word "registrant" with "accredited facility" to reflect the intent of the accreditation requirements.

Change: Concerning §289.230(y), the department replaced the word "publish" with "post" for clarification and the words "Mammography Accreditation Program of the Bureau of Radiation Control:" were deleted because they were redundant.

The following comments were received concerning the proposed section. Following each comment is the department's response and any resulting change(s).

Comment: Concerning the proposed preamble, the commenter indicated that the fiscal impact is somewhat overstated as the ACR shows the most active units at any one facility in Texas is six instead of ten.

Response: The department acknowledges the comments. A range of one to ten machines was used in the fiscal note to give registrants who may wish to increase the number of authorized units in the future an idea of the financial impact. No change was made as a result of the comments.

Comment: Concerning §289.230(b)(16), one commenter indicated that there are inconsistencies and conflicts with how the terms "facilities" and "mammography system" are defined. The commenter further indicates that the definition of "mammography system" includes the radiological technologist and the physician and questioned what criteria the medical physicist is using to calculate personnel performance? The commenter suggested that the personnel requirements would be better defined under "mammography facility" and not "mammography system" to be consistent with MQSA.

Response: The department acknowledges the comments. The department has incorporated the definition of "facility" as defined in 21 Code of Federal Regulations (CFR) §900.2(q) and "mammography system" is defined in the state mammography certification act. The department did clarify that physicist duties do not include a survey of technologists and physicians. Change is reflected in §289.230(d)(3)(C)(i).

Comment: Concerning §289.230(b)(39), one commenter indicated that the definition of source-to-image receptor distance (SID) is the United States Food and Drug Administration (FDA) definition and the commenter stated this is not the way it is applied in mammography. The commenter stated that in mammography, the SID is measured along a line that is perpendicular

to the plane of the image receptor and passes through the focal spot and this line does not go to the center of the input surface of the image receptor. The commenter further stated that he had asked the FDA to consider the above and they declined. The commenter suggested that the state of Texas take the lead in defining a mammographic SID.

Response: The department acknowledges the commenter's concerns. While applied differently for mammography, the FDA definition will be used for consistency. No change was made as a result of the comments.

Comment: Concerning §289.230(b)(42), one commenter recommended concluding this definition after the word "radiographs," since the use of a technique chart is not limited to the manual mode. The commenter further stated that the MQSA final rules, 21 CFR §900.12(e)(5)(i), make reference to the use of a technique chart in connection with automatic exposure control (AEC), as it does in §289.230(c)(3).

Response: The department agrees with the commenter and concluded the definition after the word "radiograph." Change is reflected in §289.230(b)(39).

Comment: Concerning §289.230(d)(1)(B)(i), one commenter stated that the requirement to check the densitometer every 12 months is an additional requirement over MQSA and indicated that this needs to be clarified. The commenter questioned whether this means to verify the densitometer with a known density object or strip or have it sent out to be calibrated. The commenter further indicated that if this means sending the densitometer out for calibration, facility quality control would be impacted.

Response: The department acknowledges the comment. This is an additional state requirement that has been in place since the inception of the rules in 1994. Facilities have an option of using a test strip, sending out the densitometer and getting a replacement, or having a physicist calibrate the unit. No change was made as a result of the comments.

Comment: Concerning §289.230(d)(3)(E), one commenter stated the requirement for retaining the physicist's survey for seven years is unnecessary and excessive and will not lead to higher quality mammography. The commenter recommended that annual surveys be retained for only two years.

Response: The department acknowledges the comments. The state mammography certification act specifies the retention period for the physicist's surveys. No change was made as a result of the comments.

Comment: Concerning §289.230(d)(4)(C)(ii), one commenter indicated that the requirements for self-referral mammography do not specify how "private physicians" accept self-referral patients. The commenter further stated that facilities who accept self-referred patients should have a written procedure for referral to private physicians who agree to accept these patients.

Response: The department disagrees with the commenter. The method in which a private physician accepts self-referral patients is within the purview of medical practice and not within the scope of the Texas Radiation Control Act. No change was made as a result of the comment.

Comment: Concerning §289.230(d)(9), one commenter disagreed that a technique chart should be required for automatic exposure control (AEC)-only systems, as such systems are still likely to have at least a density control selector. The commenter

further indicated that the AEC is likely to determine only the tube charge (mAs) or exposure time. The operator may still be required to select kVp, anode track, and beam filter as well as density control selection.

Response: The department agrees with the commenter and deleted the wording "except for systems that have only automatic exposure control" at the end of the first sentence of the subparagraph.

Comment: Concerning §289.230(e)(1)(H), one commenter suggested that there not be any upper limits on half value layer (HVL) established by regulation. The commenter further stated that if the department wants to impose such limits, both the upper limit on HVL and the upper limit on thickness of the selective filtration should be included.

Response: The department disagrees with the commenter. The only upper limit established in this subparagraph is for xerography and there are no units registered in the state at this time; however, the department expresses that this requirement will be kept in the event that someone acquires one. No change was made as a result of the comments.

Comment: Concerning §289.230(e)(1)(J), one commenter disagreed with allowing a plus or minus tolerance for the alignment of the chest wall edge of the compression paddle and the chest wall edge of the image receptor. The commenter stated it is undesirable to have the compression paddle appear in the image. The commenter suggested that there should be a one-way tolerance, zero extension into the image, and 1.0% of SID beyond the chest wall edge of the image receptor.

Response: The department agrees with the commenter and deleted the wording "must be aligned with the chest wall edge of the image receptor to within plus or minus 1.0% of the SID with the compression paddle placed 6 cm above the patient support device." The department replaced this language to better describe the intent of the rule.

Comment: Concerning §289.230(e)(1)(L)(i), one commenter expressed concern about phantom specifications being contained in the rules, since the phantom specifications are likely to change with time. The commenter strongly recommended that some administrative approval process be used instead.

Response: The department agrees with the commenter. However, this revision addresses state certification issues and accreditation issues. This comment relates to MQSA requirements that will be addressed in a subsequent revision of this section that will incorporate changes to the MQSA rules. No change was made as a result of the comment.

Comment: Concerning §289.230(e)(1)(L)(ii), several commenters expressed concern about the limitation on density difference of 0.40 as their density difference (DD) has varied with different types of film and different kVp from 0.39 to 0.50. One commenter stated concern about specifying density difference in rule and suggested that either the word "about" be retained or the value of the density difference be deleted entirely.

Response: The department agrees with the commenters and has deleted the wording "should be 0.40 with control limits of plus or minus 0.05 for a 4 mm thick disc," and inserted language for clarification.

Comment: Concerning §289.230(e)(1)(L)(ii), one commenter indicated that the ACR is currently revising its standards so that

the optical density of the film should be greater than 1.40. The commenter suggested that these rules reflect a similar change since the mammography community believes that improved image quality is obtained at higher densities.

Response: The department disagrees with the commenter. The MQSA final rules that will be addressed in a subsequent revision of this section state that the standard is "at least 1.20." No change was made as a result of the comment.

Comment: Concerning §289.230(e)(1)(N), one commenter stated that "ma" should be "mA."

Response: The department agrees and made the correction to the subparagraph.

Comment: Concerning §289.230(e)(2)(A), one commenter recommended that subparagraph (A) be deleted as the ACR believes that failure to use a grid is unacceptable technique.

Response: The department disagrees with the commenter as there are occasional situations in which film screen examinations without grids are appropriate. No change was made as a result of the comments.

Comment: Concerning §289.230(f)(3), one commenter indicated that there is a problem in the application of the definition of "mammography system" and recommended that the definition be revised and clarified to be consistent with MQSA.

Response: The department acknowledges the comments. "Mammography system" is defined in the state mammography certification act. No change was made as a result of the comments.

Comment: Concerning §289.230(f)(6), one commenter indicated that this paragraph on stereotactic systems is unnecessarily complex and suggested that it be clarified. The commenter questioned what is meant by "unique mammographic imaging modality" and further questioned if this means any modality other than screen/film? The commenter strongly recommended that the department issue separate regulations pertaining to stereotactic and new modalities, such as digital mammography, since the FDA has not to date implemented regulations. The commenter indicated that proceeding with regulations in this area could have a number of side effects not foreseen by the department in these proposed regulations.

Response: The department agrees partially with the commenter that the section is complex. "Unique mammographic imaging modality" means any modality other than screen/film or xerography. Xerography is delineated in §289.230(c)(2). The department disagrees that separate rules should be issued for stereotactic and new modalities. At the request of our registrants, the department developed these regulations in 1994 because the FDA had not and has not to date implemented regulations on stereotactic units. In the first sentence, the department replaced "mammographic" with "x-ray" and added "for mammography" after "imaging modalities" for clarification.

Comment: Concerning §289.230(i)(3)(C), one commenter indicated that the requirements in the second sentence of this subsection will be impossible to comply with since no compliance standards are likely to be in place for new units under clinical trial evaluations. The commenter further stated that depending on how differently the unit operates, the physicist may have considerable difficulty deciding how to survey.



Response: The department acknowledges the comments. A physicist is allowed some flexibility and discretion on reports on mammography machines in clinical trial evaluations. No change was made as a result of the comments.

Comment: Concerning §289.230(k), one commenter recommended adding an item requiring that women be notified how they can receive their mammography films if a facility terminates operation.

Response: The department acknowledges the comments. There are some situations (bankruptcy) when notification may not be possible. The department will address this issue in the subsequent revision of this section. No change was made as a result of the comments.

Comment: Concerning §289.230(o)(7), one commenter recommended the term "may" be retained instead of "should." The commenter further stated that there may be reasons why the agency would not require registrants to notify mammography patients. The commenter stated the provision is overly restrictive and would likely result in unnecessary notifications.

Response: The department acknowledges the comments. The language on notification of patients is required by the state Mammography Certification Act for Severity Level I violations. No change was made as a result of the comments.

Comment: Concerning §289.230(q)(4), one commenter stated that there is no fee for reevaluation of phantom images by the ACR. The commenter suggested that this be added.

Response: The department acknowledges the comment; however, this issue will be addressed in the subsequent revision of this section. No change was made as a result of the comment.

Comment: Concerning §289.230(u)(3), one commenter stated that only allowing facilities 30 days prior to the expiration of accreditation to reapply could present significant problems in terms of turnaround. The commenter further stated that the ACR encourages facilities to apply for renewal six months prior to their expiration date. The commenter also stated that since the department plans to have the ACR review clinical and phantom images, an extended time should be considered.

Response: The department disagrees with the commenter. The rule does not prohibit an applicant from submitting an application for renewal of accreditation earlier than 30 days. The department encouraged applicants to submit such renewal as early as possible. No change was made as a result of the comment.

Comment: Concerning §289.230(z)(1), one commenter indicated it is not necessary to list each of the topics included in mammography training. The commenter stated that there are topics not listed that are clearly related but should be included in this subject listing. The commenter suggested restating the first sentence to read: "Recommended subjects in mammography training should include, but not be limited, to the following:" The commenter further suggested discussing these issues with the FDA as they once considered listing subjects and subsequently abandoned it.

Response: The department agrees partially with the commenter and added the suggested language in §289.230(z)(1). The department disagrees that the subjects should not be listed and will be addressed in the subsequent revision of this section.

Commenters included representatives from General Electric Medical Systems and the American College of Radiology. The commenters were generally favorable of the rule as proposed; however, the commenters had questions or specific concerns, and offered suggestions for changes to the proposal as discussed in the summary of comments.

The amendment is adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

*§289.230. Certification of Mammography Systems.*

(a) Purpose and scope.

(1) This section provides for the certification of mammography systems and the accreditation of mammography facilities. No person shall use x-ray producing machines for mammography of humans except as authorized in a state certification of mammography systems issued by the agency in accordance with the requirements of this section and in a certificate issued by the United States Food and Drug Administration (FDA).

(2) (No change.)

(3) In addition to the requirements of this section, all registrants are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), and §289.226 of this title (relating to Registration of Radiation Machine Use and Services).

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

(1) Accreditation - An official approval of a mammography facility by an accreditation body.

(2) Accreditation body - An entity that has been approved by the FDA under 42 United States Code §263b(e)(1)(A) to accredit mammography facilities.

(3) Automatic exposure control (AEC) - A device that automatically controls one or more technique factors in order to obtain at preselected locations a required quantity of radiation.

(4) Average glandular dose - The value in millirad (mrad) or milligray (mGy) for a given breast or phantom thickness that estimates the average absorbed dose to the glandular tissue extrapolated from free air exposures and based on fixed filter thickness and target material.

(5) Beam-limiting device - A device that provides a means to restrict the dimensions of the x-ray field.

(6) Calibration of instruments - The comparative response or reading of an instrument relative to a series of known radiation values over the range of the instrument.

(7) Calibration of machines - The measurement and specification of absorbed dose to a medium, or exposure in air, at a defined point in a radiation beam.

(8) Certification of mammography systems (state certification) - A form of permission given by the agency to an applicant who has met the requirements for mammography system certification set out in the Act and this chapter.

(9) Contact hour - 50 minutes of attendance and/or participation in instructor-directed activities.

(10) Continuing education - Acquiring contact hours by attendance and/or participation in lectures, conferences, or seminars; or participation in self-study programs.

(11) Control panel - That part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(12) Dedicated mammographic equipment - Equipment that has been specifically designed and manufactured for mammography.

(13) Equipment (See definition for x-ray equipment).

(14) Facility - A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person that conducts breast cancer screening or diagnosis through mammography activities, including any or all of the following:

(A) the operation of equipment to produce a mammogram;

(B) processing of film;

(C) initial interpretation of the mammogram; or

(D) maintaining the viewing conditions for that interpretation.

(15) Formal training - Attendance and participation in instructor-directed activities. This does not include self-study programs.

(16) Half-value layer (HVL) - The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any that might be present initially in the beam concerned, is deemed to be excluded.

(17) Interpreting physician - A physician who interprets mammographic images and who meets the requirements of subsection (d)(2)(A) of this section.

(18) Image receptor - Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(19) kV - Kilovolt.

(20) kVp - Kilovolt peak.

(21) mA - Milliampere.

(22) Mammogram - A radiographic image produced through mammography.

(23) Mammographic phantom - A test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer. The phantom shall be approved or accepted by the FDA.

(24) Mammography - The use of x-radiation to produce an image of the breast on film, paper, or digital display that may be used to detect the presence of pathological conditions of the breast.

(25) Mammography system - A system that includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements of this section relating to the reading, evaluation, and interpretation of mammograms.

(26) mAs - Milliampere-second.

(27) Medical physicist - A person meeting the qualifications for a medical physicist specified in subsection (d)(2)(C) of this section.

(28) Medical radiological technologist - An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations and who meets the requirements in subsection (d)(2)(B) of this section.

(29) Mobile services - The utilization of radiation machines in temporary locations for limited time periods. The radiation machines may be fixed inside a mobile van or transported to temporary locations.

(30) Mobile x-ray equipment (See definition for x-ray equipment).

(31) Optical density (OD) - A measure of the percentage of incident light transmitted through a developed film and defined by the equation.

Figure: 25 TAC §289.230(b)(31)

(32) Patient - Any individual who undergoes clinical evaluation in a mammography facility, regardless of whether the person is referred by a physician or is self-referred.

(33) Phantom image - A radiographic image of a phantom.

(34) Self-referral mammography - The use of x-radiation to test asymptomatic women for the detection of diseases of the breasts when such tests are not specifically and individually ordered by a licensed physician.

(35) Severity Level I Violation - Examples of a severity level I violation include but are not limited to the following:

(A) unqualified interpreting physician;

(B) unqualified mammography operator;

(C) unqualified medical physicist;

(D) failing phantom images for more than three months;

(E) failure to perform processor quality control for more than two months;

(F) failure to have a quality control program in place and being performed; and

(G) operating with a denied accreditation certificate.

(36) Source-to-image receptor distance (SID) - The distance from the source to the center of the input surface of the image receptor.

(37) Survey - An on-site physics consultation and evaluation of a mammography system performed by a medical physicist.

(38) Technical aspects of mammography - In relation to continuing education, some or all of the following subjects must be included:

(A) anatomy and physiology of the female breast;

(B) mammographic positioning;

(C) technical factors used in mammography;

(D) mammographic film evaluation and critique;

(E) breast pathology; or

(F) mammographic quality assurance procedures.

(39) Technique chart - A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs.

(40) X-ray equipment - An x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(A) mobile x-ray equipment - x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(B) stationary x-ray equipment - x-ray equipment that is installed in a fixed location.

(41) X-ray field - That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(42) X-ray tube - Any electron tube that is designed to be used primarily for the production of x rays.

(c) Exemptions.

(1) Mammography machines or cabinet x-ray units used exclusively for examination of breast biopsy specimens are exempt from the requirements of this section. These units are required to meet applicable provisions of §289.226 of this title and §289.227 of this title (relating to Use of Radiation Machines in the Healing Arts and Veterinary Medicine).

(2) Xerography systems not used for detection of diseases of the breast are exempt from the requirements of this section. These units are required to meet applicable provisions of §289.226 of this title and §289.227 of this title.

(3) Mammography systems not meeting the AEC requirements of subsection (e)(1)(G) of this section are exempt from this requirement if changes in the facility's technique chart reflect the density settings required to maintain the film density to within plus

or minus 0.3 OD when the AEC is utilized. This change shall be addressed in the facility's operating and safety procedures.

(4) Mammography systems used exclusively for invasive interventions for localization or biopsy procedures or other unique mammographic imaging modalities are exempt from the requirements of this section except for those listed in subsection (f)(6) of this section.

(5) All mammography registrants are exempt from the radiation protection program requirements of §289.202(e) of this title.

(d) Operational controls for mammographic equipment.

(1) Quality assurance.

(A) Quality assurance program. Each registrant shall have a written, ongoing quality assurance program specific to mammographic imaging covering all components of the diagnostic x-ray imaging system to ensure consistently high-quality images while minimizing patient exposure. Responsibilities under this requirement include the following:

(i)-(iv) (No change.)

(B) Quality control. The registrant shall ensure that the following quality control items are performed at least as often as the frequency specified when mammographic equipment is initially installed, replaced, or reassembled after moving. When the results of tests performed in accordance with this subparagraph and subparagraph (C) of this paragraph do not meet the required acceptance criteria, corrective action shall begin within 30 days following the check and completed no longer than 90 days from commencement, unless otherwise authorized by the agency. Clinical images of mammographic examinations shall not be processed using a processor that deviates from the requirements of clause (i) of this subparagraph. A processor, other than the one commonly in use, may be used temporarily provided that the backup processor has been tested according to clause (i) of this subparagraph and meets the requirements of clause (i) of this subparagraph. A phantom image from the mammography system shall be acquired and run in the backup processor and evaluated for acceptable quality according to clause (iv) of this subparagraph, prior to the first patient exposure. Records of the quality control checks, including any correction or repair, shall be maintained for a minimum of two years for inspection by the agency. Films that result from the performance of quality control tests shall be maintained for a minimum of 12 months.

(i) Processor performance shall be evaluated by sensitometric and densitometric means and by developer temperature daily, or on each day of use for mammography, and the results recorded before the first patient exposure. The calibration of the densitometer must be checked every 12 months. Film processors utilized for mammography shall be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent. For any registrant performing mammography and using film processors at multiple locations, such as a mobile service, each processor shall be subject to the requirements of this clause. Corrective action shall be taken in the event of the following:

(I) deviations exceeding plus or minus 0.15 in OD from established operating levels occur for readings of mid-density and DD on the sensitometric control charts; and/or

(II) (No change.)

(ii)-(xvi) (No change.)

(C) Additional quality control requirements. When deviations are found, corrections or repairs shall be made in accordance with subparagraph (B) of this paragraph.

(i)-(iii) (No change.)

(D) Retention of clinical images. A registrant shall maintain and make available to a patient of the facility any original mammograms performed at the facility until the earlier of either:

(i) the fifth anniversary of the mammography;

(ii) the tenth anniversary of the mammography, if an additional mammogram of the same patient is not performed by the facility; or

(iii) at the request of the patient, the date the patient's medical records are forwarded to another medical institution, to a physician of the patient, or to the patient. If the medical records are permanently forwarded, this institution or physician shall maintain and become responsible for the original film until the fifth or tenth anniversary as specified in clauses (i) and (ii) of this subparagraph.

(E) Interpretation of clinical images. Each facility shall prepare a written report of the results of any mammography examination. Such report shall be completed as soon as reasonably possible and shall be:

(i) signed by the interpreting physician or signed by electronic signature by the interpreting physician;

(ii) maintained in the mammography patient's medical record in accordance with clauses (i) and (iii) of this subparagraph. A facility is not required to maintain copies of the lay person summary; and

(iii) provided as follows:

(I) to the mammography patient's physician(s);

(II) if the mammography patient's physician is not available, the report shall be sent directly to the mammography patient and shall include a summary written in language easily understood by a lay person; or

(III) if the patient is self-referred, such report shall comply with the provisions of paragraph (4) of this subsection.

(F) Follow-up on interpretation of clinical images. Each facility shall establish procedures for reviewing outcome data from all mammography performed, including follow-up on the disposition of positive mammograms and correlation of surgical biopsy results with mammogram reports.

(G) Processing of mammographic images. Each registrant shall utilize the same processor for clinical mammographic and mammographic phantom images. Clinical images shall be processed within an interval not to exceed 24 hours from the time the first clinical image is taken.

(i) Each clinical image shall be marked by a film flasher device, lead marker, or printed label in a non-critical area on the film. The information shall include, but is not limited to, facility name, patient's name, and the date of the film.

(ii) Information shall also be maintained for each clinical image by utilizing a label on each film, recording on the film jacket, or maintaining a log or other means. The information shall include, but is not limited to, compressed breast thickness or degree of compression, and kVp.

(iii) Facilities utilizing batch processing shall:

(I) use a container to transport clinical images that will protect the film from exposure to light and radiation;

(II) maintain a log to include each patient name and unique identification number, date and time of the first exam of each batch, and date and time of batch development.

(H) Xerography. Processing equipment for xerography shall be evaluated daily on each day of use before the first mammography patient exposure. Processing and maintenance of equipment shall be performed in accordance with manufacturer's recommendations. Xerography systems shall comply with all the requirements for mammography in this subsection and in subsection (e) of this section except for the following: subparagraphs (B)(i)-(iii), (vi), (viii), and (ix); (C)(ii) and (iii); and (G) of this paragraph.

(2) Personnel qualifications.

(A) Interpreting physician. Each physician interpreting mammograms shall:

(i) hold a current Texas license issued by the Texas State Board of Medical Examiners and be certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or one of the other bodies approved by the FDA to certify interpreting physicians or have equivalent formal training and experience;

(ii) have had 40 hours of documented continuing medical education credits in mammography. (Continuing education credits shall be approved by the Accreditation Council for Continuing Medical Education or the Committee on Continuing Medical Education of the American Osteopathic Association.) Forty hours specifically devoted to mammography during residency will be accepted if documented in writing by the radiologist, and if the residency program has been approved by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association;

(iii) have initial experience six months preceding application in reading and interpreting mammograms from the examinations of:

(I) at least 240 mammography patients as a qualified interpreting physician; or

(II) at least 240 mammography patients under the direct supervision of a qualified interpreting physician; and

(iv) have the following continuing experience:

(I) reading and interpreting mammograms from the examination of an average of at least 40 mammography patients per month over 24 months; and

(II) participating in education programs, either by teaching or completing an average of at least five continuing medical education credits in mammography per year at intervals not to exceed three years.

(B) Operators of equipment. The x-ray mammographic machines shall be operated by an individual currently certified as a medical radiologic technologist under Texas Civil Statutes, Article 4512m and who has completed a minimum of 40 hours of formal mammographic training as outlined in subsection (z)(1) of this section or an individual who qualified as an operator of equipment prior to August 10, 1998. Medical radiologic technologists shall accumulate an average of at least five continuing education hours per year in the technical aspects of mammography at intervals not to exceed three years.

(C) Medical physicist. The person evaluating the performance of mammographic systems in accordance with this section shall hold a current Texas license under the Medical Physics Practice Act, Article 4512n, in diagnostic radiological physics. The person must also be registered with the agency in accordance with §289.226(e) of this title and the Texas Radiation Control Act unless exempted by §289.226(b)(6) of this title. The person must participate in education programs, either by teaching or completing an average of at least five continuing medical education credits in mammography per year at intervals not to exceed three years.

(3) Personnel responsibilities.

(A) Supervising physician responsibilities shall include the following:

(i)-(iv) (No change.)

(v) to select a technologist to perform the quality control tests;

(vi) to review the technologists' quality control test results at least every three months, or more frequently if consistency has not yet been achieved; and

(vii) to review the physicists' results annually or more frequently when needed.

(B) Equipment operators' responsibilities shall include performing and recording the results of the following tests or tasks at the frequency indicated. The facility may assign the responsibility for individual tasks within the quality assurance program to a quality control technologist.

(i)-(xi) (No change.)

(C) Medical physicists' responsibilities include the following:

(i) conducting an annual on-site mammography survey of the entire mammography system (excluding personnel) while the medical physicist is physically present, to include performance of the following:

(I) alignment of beam limiting device in accordance with subsection (e)(1)(D) of this section;

(II) evaluation of focal spot performance in accordance with subsection (e)(1)(E) of this section;

(III) kVp accuracy in accordance with subsection (e)(1)(F) of this section;

(IV) beam quality assessment (HVL measurement) in accordance with subsection (e)(1)(H) of this section;

(V) AEC performance in accordance with subsection (e)(1)(G) of this section;

(VI) uniformity of screen speed;

(VII) average glandular dose in accordance with subsection (e)(2) of this section;

(VIII) output reproducibility, mA and mAs linearity in accordance with subsection (e)(1)(N) of this section;

(IX) image quality evaluation in accordance with subsection (e)(1)(L) of this section;

(X) artifact evaluation; and

(ii) performing a survey that verifies that the mammographic unit meets the equipment standards in subsection

(e)(1) of this section and the average glandular dose meets the requirements of subsection (e)(2) of this section on equipment that is initially installed, replaced, or reassembled after moving; and

(iii) verifying the average glandular dose within 60 days of replacement in accordance with subsection (e)(2) of this section on mammographic units that have had a tube or tube insert replaced.

(D) The medical physicist shall provide the following to the facility:

(i) a written report of the results of the tests listed in subparagraph (C) of this paragraph;

(ii) written recommendations for corrective actions according to the test results; and

(iii) a review of the test results with the supervising physician or his/her designee and the technologist(s) performing the quality control.

(E) Records of the survey listed in subparagraph (C)(i) of this paragraph shall be maintained by the facility for seven years.

(4) Self-referral mammography. Any person proposing to conduct a self-referral mammography program shall not initiate such a program without prior approval of the agency. When requesting such approval, that person shall submit the following information:

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

(C) written procedures to include methods of:

(i) advising individuals of the results of the self-referral mammography procedure and any further medical needs indicated. If a report is sent to the mammography patient, it shall include a summary written in language easily understood by a lay person;

(ii) advising private physicians of the results of the self-referral mammography procedure and any further medical needs indicated;

(iii) follow-up to confirm that mammography patients with positive findings and mammography patients needing repeat exams have received proper notification; and

(iv) follow-up to confirm that practitioners have received proper notification of patients with positive findings needing repeat exams; and

(D) (No change.)

(5) Records required to be kept with units authorized for mobile services.

(A) In addition to the requirements of §289.203(b) of this title, copies of the following shall be kept with units authorized for mobile services:

(i)-(iii) (No change.)

(iv) current §289.112 of this title, §289.201 of this title, §289.202 of this title, §289.203 of this title, §289.226 of this title, and §289.230 of this title.

(v) copy of certification of mammography system;

(vi) certification of inspection or notice of failure from last inspection if applicable; and

(vii) copy of mammography facility accreditation.

(B) (No change.)

(6) Records required at authorized use locations. Copies of the following shall be kept at authorized use locations:

(A) operating and safety procedures in accordance with paragraph (7) of this subsection;

(B) quality assurance program in accordance with paragraph (1) of this subsection;

(C) credentials for interpreting physicians operating at that location in accordance with paragraph (2)(A) of this subsection;

(D) credentials for medical radiologic technologists operating at that location in accordance with paragraph (2)(B) of this subsection;

(E) quality control records in accordance with paragraph (1) of this subsection;

(F) training and continuing education records for interpreting physicians and medical radiologic technologists operating at that location in accordance with paragraph (2)(A) and (B) of this subsection;

(G) current physicist annual survey of the mammography system;

(H) current §289.112 of this title, §289.201 of this title, §289.202 of this title, §289.203 of this title, §289.204 of this title, §289.226 of this title, and §289.230 of this title;

(I) copy of certification of mammography system;

(J) certification of inspection or notification of failure if applicable;

(K) records of receipts, transfers, and disposal in accordance with paragraph (10) of this subsection;

(L) calibration, maintenance, and modification records in accordance with paragraph (13) of this subsection; and

(M) copy of mammography facility accreditation.

(7) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures that shall be made available to each individual operating x-ray equipment, including any restrictions of the operating technique required for the safe operation of the particular x-ray system. These procedures shall include a quality assurance program in accordance with paragraph (1) of this subsection.

(8) Occupational dose limits and personnel monitoring. Except as otherwise exempted, all individuals who are associated with the operation of a radiation machine are subject to the occupational dose requirements of §289.202 (f), (j), (l), and (m) of this title regarding dose limits to individuals and the personnel monitoring requirements of §289.202(q) of this title.

(9) Technique Chart. A chart or manual shall be provided or electronically displayed in the vicinity of the control panel of each machine that specifies technique factors to be utilized versus patient's anatomical size. The technique chart shall be used by all operators.

(10)-(13) (No change.)

(e) Mammographic x-ray systems.

(1) Equipment standards. Only x-ray systems meeting the following standards shall be used:

(A) System design. The equipment shall have been specifically designed and manufactured for mammography in

accordance with 21 Code of Federal Regulations (CFR) 1010.2, 1020.30, and 1020.31.

(B) (No change.)

(C) Target/Filter. The x-ray system shall have the capability of providing kVp/target/filter combinations compatible with image receptor systems meeting the requirements of subparagraph (B) of this paragraph.

(D) (No change.)

(E) Evaluation of focal spot performance: Focal spot performance shall be evaluated by measuring both parallel and perpendicular to the anode-cathode axis and determining whether they are in compliance with manufacturer-provided and National Electrical Manufacturers Association specifications. Focal spot performance also may be evaluated by determining limiting resolution by using a high-contrast resolution pattern. All focal spot dimensions shall be measured.

(F) Accuracy of kVp. The actual kVp shall meet manufacturer's specifications or in the absence of manufacturer's specifications shall be within plus or minus 5.0% of the indicated kVp.

(G) Automatic exposure control performance.

Figure: 25 TAC §289.230(e)(1)(G)

(H) Beam quality. When used with screen-film image receptors, and the contribution to filtration made by the compression device is included, the HVL shall be greater than or equal to  $kVp/100 + 0.03$  (in units of millimeters (mm) of aluminum (Al) but less than  $kVp/100 + C$  (mm of Al) where  $C = 0.12$  mm Al for molybdenum/molybdenum,  $C = 0.19$  mm Al for molybdenum/rhodium, and  $C = 0.22$  mm Al for rhodium/rhodium. Facilities with mammographic units with anode/filter combinations that do not meet the requirements of this paragraph may request an exemption. The exemption request should include manufacturer's specifications for HVL for the specific anode/filter combination. For xeroradiography, the HVL of the useful beam with the compression device in place shall be at least 1.0 and not greater than 1.6 mm aluminum equivalent, tested at the kVp used under clinical conditions.

(I) (No change.)

(J) Compression. The x-ray system shall be capable of compressing the breast with a force of at least 25 pounds and shall be capable of maintaining this compression for at least 15 seconds. For systems with automatic compression, the maximum force applied without manual assistance shall not exceed 40 pounds; and the chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than 1.0% of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.

(K) Screen-film contact. Cassettes shall not be used for mammography if one or more large areas (greater than 1 square centimeter (cm<sup>2</sup>)) of poor contact can be seen in a 40 mesh test.

(L) Image quality.

(i) The mammographic x-ray imaging system shall be capable of producing images of the mammographic phantom in which the following objects are visualized:

(I) the four largest fibers with thicknesses of: 1.56 mm, 1.12 mm, 0.89 mm, and 0.75 mm.

(II) the three largest speck groups with diameters of: 0.54 mm, 0.40 mm, and 0.32 mm; and

(III) the three largest masses with thicknesses of: 2.0 mm, 1.0 mm, and 0.75 mm;

(ii) The optical density of the film should be greater than 1.20 with control limits of plus or minus 0.20; while the density difference between the background of the phantom and an added test object, used to assess image contrast, shall be measured and shall not vary by more than plus or minus 0.05 from the established operating level.

(iii) (No change.)

(M) Technique settings. The technique settings used for subparagraph

(L) of this paragraph and paragraph (2) of this subsection shall be those used by the facility for its clinical images of a 50% adipose/50% glandular 4.0 to 4.5 cm compressed breast, utilizing the processor used for patient films.

(N) Output reproducibility. Output reproducibility and mA or mAs linearity shall comply with the following:

(i) Exposure reproducibility.

Figure: 25 TAC §289.230(e)(1)(N)(i)

(ii) Linearity.

Figure: 25 TAC §289.230(e)(1)(N)(ii)

(2) Dose. The average glandular dose for one craniocaudal view of a 4.0 to 4.5 cm (1.8 inch) compressed breast, composed of 50% adipose/50% glandular tissue, shall not exceed the following values:

(A) 100 mrad (1 (mGy)) for film/screen systems without grid;

(B) 300 mrad (3 (mGy)) for film/screen systems with grid; and

(C) 400 mrad (4 (mGy)) for xeroradiographic systems.

(f) Certification requirements. In addition to the requirements of §289.226(c) and if applicable, (g) of this title, each applicant shall comply with the following.

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

(3) An applicant for certification must obtain a certification on each mammography system that is used by the applicant or the applicant's agent (for the purposes of the requirements of this paragraph, the word "used" refers to the entity other than the technologist that directs the application of radiation to humans). An application for mammography system certification may contain information on multiple mammography x-ray units. Each x-ray unit must be identified by referring to the machine's manufacturer, model number, and serial number of the control panel. An applicant or applicant's agent shall provide proof of current accreditation by an accreditation body approved by the FDA on forms prescribed by the agency or submit an application for accreditation in accordance with subsection (p) of this section.

(4) The applicant shall be qualified by reason of training and experience to use the mammographic machines for the purpose requested in accordance with this chapter in such a manner as to minimize danger to public health and safety.

(5) Each applicant shall submit documentation of the following:

(A) (No change.)

(B) personnel qualifications, including dates of licensure or certification, in accordance with subsection (d)(2) of this section;

(C) model and serial number of each mammographic unit control panel;

(D) evidence of the following by a physicist holding a current Texas license under the Medical Physics Practice Act, Article 4512n with a specialty in Diagnostic Radiological Physics:

(i)-(ii) (No change.)

(E) self-referral program information in accordance with subsection (d)(4) of this section, if the facility offers self-referral mammography.

(6) An applicant for certification of mammography stereotactic systems or other unique x-ray imaging modalities for mammography shall comply with subsections (d)(1)(A), (B)(xi)-(xiv), and (xvi); (2)(B) and (C); (3)(A)-(C), as applicable; (5) and (6) as applicable; (7)-(13); (e)(1)(E)-(H), and (N); (f) except for the accreditation requirements of FDA in (f)(3); (g)-(i) as applicable; (j)-(n); (o)(2)-(8); and (z)(1) and (2) of this section as applicable. The purpose and scope of this section and the definitions in subsection (b) of this section also apply to certification of these systems.

(7) (No change.)

(8) Notwithstanding the provisions of §289.204 of this title, reimbursement of application fees may be granted in the following manner:

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

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with Formal Hearing Procedures, §§1.21-1.34 of this title (relating to the Texas Board of Health).

(g) Issuance of certification of mammography systems. Issuance of certification of mammography systems shall be in accordance with §289.226(k) of this title.

(h) Specific terms and conditions of certification of mammography systems. Specific terms and conditions of certification of mammography systems shall be in accordance with §289.226(l) of this title.

(i) Responsibilities of registrant.

(1) In addition to the requirements of §289.226(m)(2) and (4)-(7) of this title, a registrant shall notify the agency in writing prior to any changes that would render the information contained in the application or the certification of mammography systems inaccurate. These include but are not limited to the following:

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

(C) mammographic x-ray units.

(2) (No change.)

(3) The following criteria applies to new, replacement, or loaner units and units used for clinical trial evaluations.

(A) A facility with an existing certification of mammography system may begin using a new or replacement unit before receiving an updated certification if the paperwork regarding the unit has been submitted to the agency with a licensed medical physicist's report verifying compliance of the new unit with the regulations. The physicist's report is required prior to using the unit on patients.

(B) Loaner units may be used on patients for 60 days without adding the unit to the certification. A licensed medical physicist's report verifying compliance of the loaner unit with this section shall be completed prior to use on patients. The results of the survey must be submitted to the agency with a cover letter indicating period of use.

(C) Units involved in clinical trial evaluations may be used on patients for 60 days without adding the unit to an existing certification. A licensed medical physicist's report verifying compliance of the loaner unit with this section shall be completed prior to use on patients. The results of the survey must be submitted to the agency with a cover letter indicating period of use. If the use period will exceed 60 days, the facility shall add the unit to their certification and a prorated fee will be assessed.

(D) No fees will be assessed for loaner units or evaluation periods of 60 days or less.

(E) Loaner units or units involved in clinical trial evaluations are exempt from the inspection requirement in subsection (o)(1) of this section.

(4) Records of training and experience and all other records required by this section shall be maintained for review in accordance with subsection (z)(2) of this section.

(j) Expiration of certification of mammography systems.

(1) Except as provided by subsection (l) of this section, each certification of mammography systems expires at the end of the day in the month and year stated on the certificate of registration on the expiration date specified. Expiration of the certification of mammography systems does not relieve the registrant of the requirements of this chapter.

(2) If a registrant does not submit an application for renewal of the certification of mammography systems under subsection (l) of this section, as applicable, the registrant shall on or before the expiration date specified in the certification of mammography systems:

(A) terminate use of all radiation machines;

(B) submit a record of the disposition of the x-ray units; and

(C) pay any outstanding fees in accordance with §289.204 of this title.

(k) Termination of certification of mammography systems. When a registrant decides to terminate all activities involving radiation machines authorized under the certification of mammography systems, the registrant shall:

(1) notify the agency immediately;

(2) request termination of the certification of mammography systems in writing;

(3) submit a record of the disposition of the x-ray units; and

(4) pay any outstanding fees in accordance with §289.204 of this title.

(l) Renewal of certification of mammography systems.

(1) Application for renewal of certification shall be filed in accordance with this subsection and §289.226(c) and (g) of this title, as applicable.

(2) If a registrant files an application in proper form at least 30 days before the existing certification expires, such existing certification shall not expire until the application status has been determined by the agency.

(3) A certification for a mammographic unit is valid for three years from the date of issuance unless the certification of the facility is revoked prior to such deadlines. This is effective for certificates issued after September 1, 1997.

(A) If a registrant fails to renew the certification by the required date, the registrant may renew the certification on payment of the annual fee and a late fee. If the certification is not renewed before the 181st day after the date on which the certification expired, the registrant must apply for an original certification under this section.

(B) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certificate as provided in this subsection and §289.226(c) and (g) of this title, as applicable.

(m) Modification and revocation of certification of mammography systems. Modification and revocation of certification of mammography systems shall be in accordance with §289.226(q) of this title.

(n) Reciprocal recognition of out-of-state certificates of registration. Mammographic x-ray units will not be granted reciprocal recognition and must comply with the requirements of this section.

(o) Inspections. In addition to the requirements of §289.201(e) of this title, the following applies to inspections of mammography systems.

(1) The agency shall inspect each mammography system that receives a certification in accordance with this chapter not later than the 60th day after the date the certification is issued.

(2) The agency shall inspect, at least once annually, each mammography system that receives a certification.

(3) To protect the public health, the agency may conduct more frequent inspections than required by this subsection.

(4) The agency shall make reasonable attempts to coordinate inspections in this section with other inspections required in accordance with this chapter for the facility where the mammography system is used.

(5) After each satisfactory inspection, the agency shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection shall be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall include the following:

(A) specific identification of the mammography system inspected;

(B) the name and address of the facility where the mammography system was used at the time of the inspection; and

(C) the date of the inspection.



(6) Any Severity Level I violation found by the agency constitutes grounds for posting notice of failure of the mammography system to satisfy agency requirements.

(A) Notification of such failure shall be posted:

(i) on the mammography x-ray unit at a conspicuous place if the violation is machine-related; or

(ii) near the place where the mammography system practices if the violation is personnel-related; and

(iii) in a sufficient number of places to permit the patient to observe the notice.

(B) The notice of failure shall remain posted until the facility is authorized to remove it by the agency. A facility may post documentation of corrections of the violations submitted to the agency along with the notice of failure until approval to remove the notice of failure is received from the agency.

(7) The agency shall require registrants to notify patients on whom the facility performed a mammography during the 30 days preceding the date of the inspection that revealed the failure. The facility shall:

(A) inform the patient that the mammography system failed to satisfy the agency's certification standards;

(B) recommend that the patient have another mammogram performed at a facility with a certified mammography system; and

(C) list the three facilities closest to the original testing facility that have a certified mammography system.

(8) In addition to the requirements of paragraph (7) of this subsection, the agency may require a facility to notify a patient of any other failure of the facility's mammography system to meet the agency's certification standards.

(9) The patient notification shall include the following:

(A) explanation of the mammography system failure to the patient; and

(B) the potential consequences to the mammography patient.

(10) The registrant shall maintain a record of the mammography patients notified in accordance with paragraphs (7) and (8) of this subsection for inspection by the agency. The records shall include the name and address of each mammography patient notified, date of notification, and a copy of the text sent to the individual.

(p) Accreditation of mammography facilities.

(1) All mammography facilities shall be accredited by an authorized FDA accreditation body. All facilities applying for and receiving accreditation through the agency shall comply with §289.112 of this title, §289.201(c), (h)-(j), and (l)-(n) of this title, §289.203 of this title, subsections (b), (c)(1)-(3), (d)(1)-(3) and (7)-(13), and (e)(1) and (2) of this section.

(2) In order to be accredited by the agency, the applicant shall submit an application for accreditation on forms and in accordance with accompanying instructions prescribed by the agency.

(A) Each application must be signed by a licensed physician.

(B) The agency may at any time after the filing of the original application, require further statements in order to enable the

agency to determine whether the accreditation document should be issued, denied, modified, or revoked.

(C) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with §289.201(n) of this title.

(D) Each application for accreditation shall be accompanied by the fee prescribed in subsection (q) of this section.

(E) Each applicant shall submit documentation of the following:

(i) quality assurance program in accordance with subsection (d)(1) of this section;

(ii) personnel qualifications, training, and experience in accordance with subsection (d)(2) of this section;

(iii) model and serial number of each mammographic unit control panel;

(iv) procedures on clinical image interpretation, patient notification, and patient data tracking; and

(v) evidence of the following by a physicist holding a current Texas license under the Medical Physics Practice Act, Article 4512n with a specialty in Diagnostic Radiological Physics:

(I) each unit meets the equipment standards in subsection (e)(1) of this section; and

(II) the average glandular dose for one cranio-caudal view for each unit does not exceed the appropriate values in subsection (e)(2) of this section.

(F) Upon notification by the agency, each applicant shall directly submit the following to the American College of Radiology (ACR) in accordance with their procedures:

(i) clinical images;

(ii) phantom images; and

(iii) processor data.

(q) Fees for accreditation of mammography facilities.

(1) Each application for accreditation of a mammography facility shall be accompanied by a nonrefundable fee. No application will be accepted for filing or processed prior to payment of the full amount specified.

(2) A nonrefundable fee in accordance with paragraph (4) of this subsection shall be paid every three years for each accredited mammography unit. The fee shall be paid in full on or before the expiration date of the accreditation document if the facility wishes to remain accredited with the agency.

(3) Fee payments shall be in cash or by check or money order made payable to the Texas Department of Health. The payments may be mailed or made by personal delivery to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

(4) Fees for accreditation of mammography facilities are as follows.

(A) The accreditation fee for the first mammography unit is \$720.

(B) The accreditation fee for each additional mammography unit is \$345.

(C) The fee for reevaluation of clinical images is \$220 per unit.

(r) Issuance of accreditation of a mammography facility. An accreditation document will be issued when the mammography facility meets the requirements of subsection (p) of this section and becomes accredited by the agency. In order for an accreditation to be issued, the agency must be notified by the ACR that the applicant met the criteria for clinical images, phantom images, and processor quality control.

(s) Specific terms and conditions of accreditation of mammography facilities.

(1) Each accreditation document issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable requirements and orders of the agency.

(2) No accreditation document issued by the agency under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person.

(t) Responsibilities of an accredited facility. A facility shall notify the agency at least annually of any changes that would render the information contained in the application inaccurate.

(u) Expiration and renewal of accreditation of mammography facilities.

(1) The accreditation shall expire on the date specified on the accreditation document.

(2) Application for renewal of accreditation shall be filed in accordance with subsection (p) of this section and subsection (q) of this section.

(3) If a registrant files an application in proper form at least 30 days before the existing accreditation expires, such existing accreditation shall not expire until the application status has been determined by the agency.

(4) Accreditation for a mammographic facility is valid for three years from the date of issuance, unless accreditation of the facility is revoked prior to such deadline.

(5) Issuance of renewal of accreditation shall be in accordance with subsection (r) of this section.

(v) Denial of accreditation of mammography facilities.

(1) Any application for accreditation may be denied by the agency when the applicant fails to meet established criterion for accreditation or fails to respond to requests for information. Agency action on an application will be abandoned due to lack of response by the applicant. Abandonment of such actions does not provide an opportunity for a hearing; however, the applicant retains the right to resubmit the application at any time.

(2) Before the agency denies an application for accreditation, the agency shall give notice by personal service or by certified mail, return receipt requested, of the intent to deny, the facts warranting the denial, and afford the applicant an opportunity for a hearing. If no request for a hearing is received by the director of the Radiation Control Program within 30 days of personal service or the date of mailing, the agency may proceed to deny. The applicant shall have the burden of proof showing cause why the application should not be denied.

(w) Modification and revocation of accreditation of mammography facilities.

(1) Any accreditation document may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant an accreditation document on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or of the accreditation document, or order of the agency.

(2) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no accreditation document shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the accredited facility in writing and the accredited facility shall have been afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(x) On-site facility visit. Each accredited facility shall:

(1) afford the agency, at all reasonable times, opportunity to audit the facility where mammography equipment or associated equipment is used or stored; and

(2) make available to the agency for inspection, upon reasonable notice, records maintained in accordance with this chapter.

(y) Complaints. Each facility shall post the following address where complaints may be filed with the Texas Department of Health, Bureau of Radiation Control, Mammography Accreditation Program, 1100 West 49th Street, Austin, Texas 78756-3189.

(z) Appendices.

(1) Subjects to be included in mammography training shall include, but not be limited, to the following:

(A) anatomy and physiology of the female breast that shall include:

- (i) mammary glands;
- (ii) external anatomy;
- (iii) retromammary space;
- (iv) central portion;
- (v) cooper's ligament;
- (vi) vessels, nerves, lymphatics; and
- (vii) breast tissue:
  - (I) fibro-glandular;
  - (II) fibro-fatty;
  - (III) fatty; and
  - (IV) lactating;

(B) mammography positioning that shall include actual positioning of patients and/or models as follows:

- (i) craniocaudal;
- (ii) mediolateral oblique;
- (iii) supplemental;

- (iv) magnification;
- (v) errors in positioning;
- (vi) postoperative breast and the augmented breast;
- (vii) breast localization and specimen radiography;

and

- (viii) use of compression;
- (C) technical factors;
- (D) film evaluation and critique;
- (E) pathology; and
- (F) quality assurance program.

(2) Time requirements for record keeping shall be in accordance with the following chart.  
Figure: 25 TAC §289.230(z)(2)

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 20, 1998.

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Susan K. Steeg  
General Counsel

Texas Department of Health  
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For further information, please call: (512) 458-7236



## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 3. Life, Accident and Health Insurance and Annuities

#### Subchapter D. Indeterminate Premium Reduction Policies

#### 28 TAC §3.309

The Texas Department of Insurance adopts an amendment to §3.309, concerning minimum reserve requirements for indeterminate premium reduction policies. The amendment is adopted with changes to the proposed text as published in the January 23, 1998, issue of the *Texas Register* (23 TexReg 507). A public hearing on the amendment was held on April 22, 1998.

The amendment provides alternatives to the existing calculation described in §3.309(a)and(b) for determining the minimum reserves required for the life insurance products described in §3.301 of this title (Relating to Indeterminate Premium Reduction Policies). One of the new alternatives provide that an insurer that has issued these products may provide the department an annual actuarial opinion specific to these products in addition to the actuarial opinion required by Insurance Code, Article 3.28, §2A. The other alternative provides that an insurer may calculate the reserves on these products in accordance with Subchapter NN, Valuation of Life Insurance Policies, which is published elsewhere in this issue of the *Texas Register* as an adopted new regulation. These methods can be used for

those policies issued before January 1, 2000. On or after that date, the products must comply with Subchapter NN. The effective date for Subchapter NN was proposed as December 31, 1998. In response to comments the effective date was changed to January 1, 2000. Section 3.309(d) has been changed to reflect the change in the effective date of Subchapter NN. The reserves for those policies issued on or after that date would be subject to Subchapter NN. Issuers of these products may use any of the methods described in §3.309 in their 1998 annual statement and subsequent financial statements filed with the department.

The adopted section provides insurers three options for determining minimum reserve requirements. Insurers can continue to calculate the minimum reserve requirements under §3.309(a)and(b), or it can use the gross premium valuation in §3.309(c)(1), or it can comply with the provisions of Chapter 3, Subchapter NN, Valuation of Life Insurance Policies of this title.

The commenters supported the adoption of a gross premium valuation. Comments on Chapter 3, Subchapter NN of this title may be found elsewhere in this issue of the *Texas Register*. The effective date of Subchapter NN was changed to January 1, 2000, and the amendment to this section reflects that change.

American National Insurance Company, First Colony Life Insurance Company, Texas Association of Life & Health Insurers commented for the section. There were no comments against the section.

The amendment is adopted under the Insurance Code, Articles 3.28 and 1.03A. Article 3.28 authorizes the commissioner to adopt mortality tables and methods consistent with Article 3.28. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department only as authorized by a statute.

#### §3.309. Minimum Reserves.

(a) The minimum reserve basis stated in the Insurance Code, Article 3.28, requires modified net premiums that are a "uniform percentage of the respective collected premiums." The same contract premiums at the same durations are used in the reserve computation as are used in the minimum cash value computation. The reserve must never be less than the cash value, if any, in the policy.

(b) Deficiency reserves are required to be calculated using guaranteed premiums. Thus, maximum guaranteed premiums specified in the policy are used in the calculation except that any lower guaranteed premiums must be used for the periods guaranteed. As in other type policies, negative terminal reserves are not permitted; and net premiums for the earlier policy years shall be increased, if necessary, to produce a terminal reserve of zero at the end of such policy years. Any increased net premiums shall be used as the valuation net premiums for purposes of Insurance Code, Article 3.28, §10.

(c) As an alternative to calculating deficiency reserves under subsection (b) of this section, reserves may be calculated pursuant to paragraphs (1) or (2) of this subsection.

(1) Calculate reserves pursuant to Insurance Code, Article 3.28, supported by an actuarial certification of reserve adequacy by an appointed actuary based on an appropriate gross premium valuations; or

(2) Calculate the reserves in compliance with Chapter 3, Subchapter NN of this title (relating to Valuation of Life Insurance Policies).

(d) For policies issued on or after January 1, 2000, and subject to this section, reserves for those policies shall be calculated in accordance with the provisions of Chapter 3, Subchapter NN of this title (relating to Valuation of Life Insurance Policies).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter NN. Valuation of Life Insurance Policies

### 28 TAC §§3.14001-3.14008

The Commissioner of Insurance adopts new Subchapter NN, §§3.14001-3.14008 concerning the valuation of life insurance policies. Sections 3.14006-3.14008 are adopted with changes to the proposed text as published in the January 23, 1998, issue of the *Texas Register* (23 TexReg 509). A public hearing on the subchapter was held on April 22, 1998. Sections 3.14001-3.14005 are adopted without changes and will not be republished.

The new subchapter is necessary to effectively address reserve requirements for insurers and to provide a minimum reserve method for non-level premium products consistent with the principles of the Standard Valuation Law (SVL), Insurance Code, Article 3.28. The subchapter will promote consistency in reserving for the products subject to this subchapter, the use of updated mortality standards, and the long term solvency of insurers. A number of insurers interpret the SVL to allow the calculation of negative terminal reserves for many of the indeterminate premium products in the market today. Negative reserves do not provide for benefits as they come due under SVL assumptions. Although these insurers override the calculation to set up non-negative reserves, such reserves are still inadequate and appropriate deficiency reserves are not established to support these non-negative reserves.

Section 3.14006 was changed to correct the typographical error in subsection (b)(2) and (3) where the paragraphs referred to "subsection (b) of this section." That is changed to "subsection (b) of §3.14005."

Section 3.14007 was changed in response to a comment that pointed out that the third sentence in subsection (a)(5) did not exclude the select mortality factors defined in §3.14005(b)(1)(B),(C), and (D) in the calculation of one-year premium valuations.

Section 3.14007 was also changed to correct a typographical error in subsection (b) which referred to §3.14004(b). Since there is no subsection(b), it is deleted in the adopted section. Section 3.14008 was changed in response to comments by making the effective date of the subchapter January 1, 2000.

Subchapter NN will apply to all life insurance policies, with or without nonforfeiture values, with certain exceptions and conditions. The purpose of the regulation is to adopt tables of select mortality factors; and, rules for their use; rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits, and rules concerning a minimum standard for the valuation of plans with secondary guarantees. The method for calculating basic reserves defined in the adopted subchapter will constitute the commissioners' reserve valuation method for policies to which this subchapter applies. The effective date is January 1, 2000, in order to provide affected insurers time to prepare for these new requirements and seek uniform adoption of similar regulations among the states. Section 3.14001 describes the purpose of Subchapter NN. Section 3.14002 contains six tables of base select mortality factors that were adopted by the NAIC on March 12, 1995, in connection with the adoption by the NAIC of the model regulation for the valuation of life insurance policies. Section 3.14003 describes the applicability of Subchapter NN. Section 3.14004 contains definitions of certain terms used in the subchapter. Section 3.14005 describes the general calculation requirements for basic reserves and premium deficiency reserves. Section 3.14006 describes the calculation of minimum valuation standard for policies with guaranteed nonlevel premiums or guaranteed nonlevel benefits (other than universal life policies). Section 3.14007 describes the calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period of more than five years. Section 3.14008 states the date, January 1, 2000, when insurers must comply with the provisions of Subchapter NN for life insurance policies issued on or after that date.

The type of products most affected by the regulation are those where the guaranteed maximum premiums after an initial period of years are much higher than the guaranteed low premiums during the initial period of years. The guaranteed maximum premiums for the product described in the preceding sentence are approximately ten to fifteen times higher in later years than the initial guaranteed premium. These products are referred to as "Indeterminate Premium Reduction Policies". Insurers with these products that hold reserves only to provide for the expected cost of insurance in the current year may experience an increase in reserves as a result of this regulation. This increase will vary by such factors as the length of the initial period of years (as referenced previously), reserve method, reserve interest rate, the amount of increase of the guaranteed maximum premiums, issue age, length of the benefit period, and the degree of selection in the risks covered. Anticipated ranges of the increase in reserves for these products based on the length of the initial guarantee period are as follows: 1) Immaterial increase where the initial period is less than five years; 2) An increase of two-five times where the initial period is ten years; and 3) An increase of approximately ten times where the initial period is 20 years. These ranges assume that the insurer is currently providing reserves for only the anticipated cost of insurance in the current year. The department assumes that the ranges set out above are the highest levels that could occur at some point in the coverage period, and particular results may vary. Increasing reserves to the required levels would then extend a similar level of reserve conservatism to these products as is already required of other life products which should promote greater solvency protection to both the insurer

and the public. For insurers who experience the anticipated ranges of reserve increases listed above, the range of increases in the price of these products is estimated to be as follows: 1) Immaterial price increase where the initial period is less than five years; 2) An approximate 7% price increase where the initial period is ten years; and 3) An approximate 20% price increase where the initial period is 20 years. Such price increases would only be anticipated if an insurer (subject to the assumptions mentioned previously) funds any reserve increase solely out of premiums rather than other sources, and would also depend on whether the insurer chooses to continue to offer the particular product as presently designed, or decides to make modifications to its policy forms. Costs to the insurer given any increase in reserves would be the cost of funds required to be in reserves versus available for other uses. The impact of the cost, as with any increase in liabilities, depends on the opportunities for use of funds available to an insurer. The public benefit served by the change is the establishment of reasonable reserve conservatism to promote solvency and the provision for similar reserve conservatism for indeterminate premium products as that required of other products. The result therefore is a leveling of the competitive position of various term life products. The numerous other products where such reserve conservatism is currently required are anticipated to generally experience a lower but still reasonable amount of reserve conservatism due to the use of improved mortality tables that this regulation will provide in the calculation of reserves. This reduction of reserves may result in lower prices for these other products. As stated previously, this regulation will result in the same level of acceptable required reserve conservatism to be extended to all products to which this regulation applies, which will promote solvency benefits to both the insurer and the public. In addition, this regulation will promote reasonable competition across the various product lines which is a benefit to the insurer in having similar reserve standards and is expected to be a benefit to the public in lower prices for many products.

COMMENT: Several commenters objected to the proposed effective date of December 31, 1998. Most of them recommended that the subchapter become effective when the states with 51% of the U.S. population adopted a similar regulation. They said this approach would accomplish nationwide uniformity on this matter, an important goal for insurers writing indeterminate premium products in numerous states. Other commenters said the December 31, 1998, effective date would place Texas domiciled insurers at a competitive disadvantage with insurers in other states that have not adopted similar reserving standards.

RESPONSE: The department changed the effective date to January 1, 2000, in response to these comments. The department recognizes the value of nationwide uniformity in reserving standards, however, the recommendation that the subchapter be effective when states with 51% of the U.S. population adopt similar standards is considered too subjective to meet the requirement of Government Code, §2001.036 for the effective date of rules. The department also recognizes that domestic companies will be at a competitive disadvantage with insurers in other states that do not have similar reserving standards, therefore, the change in the effective date is intended to allow more states to adopt similar regulations.

COMMENT: One commenter recommended that a long term solution to appropriate term reserves be developed by the American Academy of Actuaries and for states to continue to follow the current Standard Valuation Law in the interim.

RESPONSE: The department is aware that the American Academy of Actuaries is working to develop significant changes to the Standard Valuation Law, however, this effort is in the initial drafting stages and the completion date is not known. The department will follow this effort and will consider recommendation to the legislature when completed.

COMMENT: One commenter recommended that the current actuarial opinion and memorandum regulation be modified to provide an additional actuarial opinion based on a gross premium valuation analysis instead of adopting this subchapter.

RESPONSE: The department disagrees with the recommendation. Such an additional opinion cannot substitute as a method required by the Standard Valuation Law for the calculation of minimum reserves. Such an opinion and gross premium valuation analysis can only be used to increase reserves over the minimum reserves required by the Standard Valuation Law.

COMMENT: One commenter recommended that the mortality in this subchapter should be considered in the legislative process as opposed to being adopted through rule.

RESPONSE: The legislature has delegated to the commissioner the necessary authority to adopt these mortality tables which have also been adopted by the NAIC.

COMMENT: One commenter recommended that the mortality tables in §3.14006(f)(4) be identical to those permitted under proposed §3.14005(b)(1)(A)-(D).

RESPONSE: The department disagrees with this recommendation. The tables in §3.14006(f)(4) are intended to be used for an optional simplified calculation for both basic reserves and deficiency reserves. The tables provide for a minimum floor of reserve conservatism given the simplification allowed. Note that the insurer can still elect to follow the standard basic and deficiency reserve calculations using the tables provided for in §3.14005.

COMMENT: One commenter recommended that the mortality tables proposed under §3.14006(g)(2) be identical to those in proposed §3.14005(a)(1)-(4). The commenter adds that there is no logical justification for allowing use of the proposed §3.14005 tables for policies with guarantees greater than one year while disallowing them for one-year policies.

RESPONSE: The department disagrees with the recommendation. The mortality tables currently provided are used as a test to determine whether the exemption in §3.14006(g) can be allowed. The level of mortality used for this test is conservative to allow the exemption of the unitary reserve calculation. If exempted, then unitary basic reserves and unitary deficiency reserves need not be calculated. However, segmented basic reserves and segmented deficiency reserves would be calculated and would be allowed to use the mortality tables afforded to other basic and deficiency reserve calculations in this subchapter which includes those mortality tables in §3.14005.

COMMENT: A commenter recommended adoption of this subchapter as early as practical with the proposed effective date of December 31, 1998. The commenter provided support which included mention of the opinion of the American Academy of Actuaries that this subchapter is consistent with the Standard Valuation Law, the concern that companies will continue to manipulate the guaranteed premiums in order to produce illogical and insufficient reserves without this subchapter, and concerns for company solvency without this subchapter. The commenter

added that their company holds reserves required by this subchapter.

RESPONSE: The department acknowledges and agrees that these comments support adoption.

COMMENT: A commenter recommended that Texas consider an alternate proposal which is currently being developed to address the level of mortality in this subchapter and the resulting level of deficiency reserves which are believed to be excessive. The methodology for this alternate proposal would be based on this subchapter and the mortality would be some multiple of an accepted table which is thought to produce reserves that would be acceptable for tax purposes.

RESPONSE: The department is open to consider any alternate proposal or any reasonable modification of this subchapter which provides for a reserve method that meets the requirements of the Standard Valuation Law. The department understands the arguments that the mortality in this subchapter may be too conservative for a number of risks underwritten today and is open to consider proposals with respect to such mortality. The department also understands the industry desire for uniform reserving requirements across states and therefore any such alternate proposal would need to have a reasonable expectation of uniform adoption. Until an alternate proposal is developed, department believes that Subchapter NN is the best available reserve method for uniform adoption by the states.

COMMENT: Two commenters said that this subchapter does not include expense levels, commission levels, lapse rates, and reinsurance costs in the reserve calculation.

RESPONSE: The department notes that this subchapter provides a method for minimum reserves in compliance with the Standard Valuation Law. A minimum reserve method does not specifically provide for these factors in the reserve calculation. Rather, one reserve expense component is calculated which is intended to cover all expenses with the exception of lapse rates. Lapse rates are not allowed by the Standard Valuation Law in the minimum reserve method to lower reserves. The department notes further that such factors, however, are allowed to be considered in the Standard Valuation Law by the appointed actuary to perform testing which, in the appointed actuary's opinion, may increase the minimum reserve in the aggregate over the reserves produced by the minimum reserve method.

COMMENT: Several commenters opposed adoption of this subchapter and cited that adoption of this subchapter will either cause prices to increase for the consumers or will cause changes in the design of term products that consumers do not want.

RESPONSE: The department and the NAIC thoroughly considered the possible effects of the subchapter, and the NAIC model act on which the subchapter is based, on the applicable products and their costs. The department believes that the sound financial practices established by the subchapter take precedence over the concerns expressed by the commenters.

COMMENT: Several commenters said that the subchapter's deficiency reserve exemption, for products with initial premium guarantees of five years or less, is inappropriate.

RESPONSE: The department disagrees. For initial guarantee periods of five years or less the deficiency reserves are considered to be minimal, thus posing a reduced risk to the solvency of an insurer. By exempting products with an initial

premium guarantee of five years or less, the subchapter will not affect those products.

COMMENT: Several commenters cited that the subchapter contains mortality that is too conservative and produces reserves that are too high.

RESPONSE: Insurance Code, Article 3.28, requires that the NAIC adopt mortality rates before they can be considered for adoption by the commissioner. The department is aware that the mortality in the subchapter is considered by many to be too conservative, however, it is the only mortality that has been adopted by the NAIC.

COMMENT: Several commenters criticized the complexity of the subchapter and speculated that the subchapter will cause insolvencies.

RESPONSE: The subchapter is complex as a result of the subject it addresses. The department adopts the subchapter for the purpose of preventing insolvencies in the future by assuring conservative reserve practices. Since the subchapter only applies to policies issued on or after the effective date, the reserve requirements will be applied only to those new policies, not any existing policies, hence the subchapter will not cause insolvencies and instead will promote solvency.

COMMENT: A commenter recommended that the third sentence in §3.14007(a)(5) should be changed to include references to §3.14005(a)(2),(3) and (4) to mirror the NAIC model regulation.

RESPONSE: The department inadvertently omitted the reference and agrees with the comment. Section 3.14007(a)(5), third sentence, is changed to read as follows: The select mortality factors defined in §3.14005(a)(2),(3) and (4) and §3.14005(b)(1)(B),(C) and (D) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) may not be used to calculate the one-year valuation premiums.

Commenters generally supported adoption of Subchapter NN, however, they urged that the subchapter be effective in uniformity with other states. These commenters were the American Academy of Actuaries, American Council of Life Insurance, American General Life Insurance Company, American National Insurance Company, C.N.A., Northwestern Mutual Life Insurance Company, Occidental Life Insurance Company, Southwestern Life Insurance Company, Texas Association of Life & Health Insurers, The Equitable Life Assurance Society, and USAA Life Insurance Company.

Commenting against the subchapter were Compulife Software Inc., First Colony Life Insurance Company, Hawkins & Associates and National Alliance of Life Companies.

The new sections are adopted under the Insurance Code, Articles 3.28 and 1.03A. Article 3.28 authorizes the commissioner of insurance to adopt mortality tables adopted by the National Association of Insurance Commissioners and modifications to those mortality tables and methods consistent with Article 3.28. Article 1.03A provides the commissioner with the authority to adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by a statute.

*§3.14006. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies).*

(a) **Basic Reserves.** Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy must use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either one of the two adjustments described in paragraphs (1) or (2) of this subsection may be made.

(1) An insurer may use the adjustments described in this paragraph.

(A) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment; and

(B) subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) An insurer may use the adjustments described in this paragraph.

(A) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and

(B) subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(b) **Deficiency Reserves.**

(1) The deficiency reserve at any duration shall be calculated:

(A) on a unitary basis if the corresponding basic reserve determined by subsection (a) of this section is unitary;

(B) on a segmented basis if the corresponding basic reserve determined by subsection (a) of this section is segmented; or

(C) on the segmented basis if the corresponding basic reserve determined by subsection (a) of this section is equal to both the segmented reserve and the unitary reserve.

(2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality specified in §3.14005(b) of this title (Relating to General Calculation Requirements for basic Reserves and Premium Deficiency Reserves) and rate of interest.

(3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in §3.14005(b) of this title (Relating to General Calculation Requirements for basic Reserves and Premium Deficiency Reserves).

(4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(c) **Minimum Value.** Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance must use the same valuation mortality table, select mortality factor and

interest rates as that used for the calculation of both the segmented and the unitary reserves. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(d) **Unusual Pattern of Guaranteed Cash Surrender Values.**

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

(A) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(i) the date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(ii) the mandatory expiration date of the policy; and

(B) the net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and

(C) the net to gross ratio is equal to clause (i) of this paragraph divided by clause (ii) of this paragraph as follows:

(i) the present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period;

(ii) the present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.

(3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

(A) 110% of the scheduled gross premium for that year;

(B) 110% of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

(C) 5% of the first policy year surrender charge, if any.

(e) Optional Exemption for Yearly Renewable Term (YRT) Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c) of this section.

(3) Deficiency reserves.

(A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A) of this paragraph.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if:

(A) the reinsurance premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) for any given year are independent of both the premium rates and the plan of the original policy; and

(B) only the mortality risk is reinsured.

(f) Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the approach described in paragraphs (1) and (2) of this subsection for reserves for attained-age-based YRT life insurance policies may be used.

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c) of this section.

(3) Deficiency reserves.

(A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A) of this paragraph.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(A) the premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for

any given policy at a given attained age of the insured is independent of the year the policy was issued; and

(B) the premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

(A) the initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(B) the initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

(C) after the initial period of coverage, the policy meets the conditions of paragraph (5) of this subsection.

(7) If this election is made, this approach must be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this subchapter.

(g) Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the conditions described in paragraphs (1)-(3) of this subsection are met.

(1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, and for each n-year period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(2) the guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and

(3) there are no cash surrender values in any policy year.

(h) Exemption from Unitary Reserves for Certain Juvenile Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the conditions described in paragraphs (1) - (3) of this subsection are met, based upon the initial current premium scale at issue.

(1) At issue, the insured is age twenty-four or younger;

(2) until the insured reaches the end of the juvenile period, which must occur at or before age twenty-five, the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) after the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

*§3.14007. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period of More Than Five Years.*

(a) General.

(1) Policies with a secondary guarantee include:

(A) a policy with a guarantee that the policy will remain in force at the original schedule of benefits over a period



exceeding five years, subject only to the payment of specified premiums;

(B) a policy in which the minimum premium at any future duration beyond the end of the fifth policy year is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose; or

(C) a policy with any combination of paragraphs (A) and (B) of this paragraph.

(2) A secondary guarantee period is the longest period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. Secondary guarantees that are unilaterally extended by the insurer after issue shall be considered to have been made at issue. Reserves described in subsections (b) and (c) of this section must be recalculated from issue to reflect the extensions.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation must use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

(5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in §§3.14005(a)(2),(3) and (4) and 3.14005(b)(1)(B), (C), and (D) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) may not be used to calculate the one-year valuation premiums.

(b) Basic Reserves for the Secondary Guarantees. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in §3.14004 of this title (relating to Definitions).

(c) Deficiency Reserves for the Secondary Guarantees. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in §3.14006(b) of this title (Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Premiums or Guaranteed Nonlevel Benefits (Other Than Universal Life Policies) with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) Minimum Reserves. The minimum reserves during the secondary guarantee period are the greater of:

(1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(2) The minimum reserves required by other rules or subchapters governing universal life plans.

§3.14008. *Effective Date.*

This subchapter is effective January 1, 2000.

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 20, 1998.

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Texas Department of Insurance

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## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 106. Exemptions From Permitting

##### Subchapter I. Manufacturing

###### 30 TAC §106.226

The Texas Natural Resource Conservation Commission (commission) adopts new §106.226, concerning Paints, Varnishes, Ink, and Other Coating Manufacturing and §106.375, concerning Aqueous Solutions for Electrolytic and Electroless Processes; and amendments to §106.351, concerning Salt Water Disposal (Petroleum), §106.435, concerning Classic or Antique Automobile Restoration Facility, and §106.477, concerning Anhydrous Ammonia Storage. The commission also adopts the repeal of the existing §106.226 and §106.375.

Section 106.351 and new §106.226 and §106.375 are adopted with changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1508). The remaining sections are adopted without changes and will not be republished.

##### EXPLANATION OF ADOPTED RULES

The new §106.226 and §106.375 have been restructured and reorganized for easier understanding and use. The new §106.226 restricts emissions through limits on raw material use rather than stating emission limits, and prohibits the use, under exemption, of the heavy metals strontium and cobalt in concentrations of more than 0.1% by weight. These metals, used to add color to paints and inks, are added to the existing list of heavy metals within the section which already have percentage weight restrictions. Heavy metals can be toxic with sufficient concentration or exposure. To be protective of human health, use of the metals in concentrations above 0.1% would require a detailed review of the facility's operation, and should not be eligible for an exemption from permitting. The commission has also added recordkeeping requirements to aid enforcement.

The adopted amendment to §106.351 requires that new salt water disposal facilities register with the commission using the

PI-7 form unless the facility processes the water without exposing it to the atmosphere or processes 540,000 gallons or less of salt water per day. This registration will notify the commission that users of the exemption could exceed the 25-ton per year emission limit of volatile organic compounds (VOCs) established for exempted facilities. The registration should also indicate when the hydrogen sulfide emission limits contained in 30 TAC §112.31, concerning Allowable Emissions-Residential, Business, or Commercial Property and §112.32, concerning Allowable Emissions-Other Property might be exceeded. Registration of the larger facilities will allow the commission to better track and inventory emissions.

The new §106.375 was revised to reduce the risk of potentially harmful exposure to heavy metals and hydrochloric acid (HCl). To prevent emissions of chromium, the new section clarifies the existing prohibition on the use of chromic acid in solutions that are caused to bubble or mist. This restriction is placed because chromium is a heavy metal with exposure limits that would need a more thorough analysis than that allowed by an exemption from permitting. The commission would add new language to the section requiring that emissions from certain authorized operations be vented through a vertical stack to provide good dispersion. A further restriction is placed on the concentrations, temperature, and partial pressure of HCl used in aqueous solutions to reduce emissions of HCl vapor. These restrictions are adopted to reduce the risk of human health effects from operations authorized under the section.

The amendment to §106.435 is purely administrative and changes a reference from the Texas Traffic Laws to the Texas Transportation Code, recognizing recent changes in the Texas Civil Statutes.

The amendment to §106.477 adds clarification that the restrictions in the section apply to permanent ammonia storage tanks and nurse tanks to help prevent nuisances. This section is primarily applied to agricultural operations, and the nurse tanks are those carried to the field and used to inject ammonia into the soil to increase nitrogen levels. The amendments require that connectors, valves, and hoses be maintained leak-free and that any necessary venting of gas be conducted through water, so that the gas is placed into solution and not released to the atmosphere. These restrictions are adopted to protect human health and prevent nuisances.

#### FINAL REGULATORY IMPACT ANALYSIS

The new §106.226, concerning Paints, Varnishes, Ink, and Other Coating Manufacturing, restricts emissions through limitations on material use and has been reorganized. These changes should make the exemption easier to use. The revisions restrict the use of selected heavy metals as pigmentation in paints and inks to 0.1% by weight. This limitation generally reflects current operating practice, and industry work groups agree with the commission that the reorganized section will not have a significant economic effect. This revised section will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new §106.375, concerning Aqueous Solutions for Electrolytic and Electroless Processes, allows the same metal plating operations as the repealed section it is replacing. The revisions place operational restrictions that are intended to limit emissions of HCl mist and clarify the existing prohibition against emissions of chromium and should not require significant cap-

ital expenses for compliance. The new section requires fume venting through a four-foot vertical stack, and the commission estimates the cost of stack installation to be approximately \$300 per foot. This revised section will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amendment to §106.435, concerning Classic or Antique Automobile Restoration Facility, is administrative to correct a cross-reference and has no substantial effect. The amendment to §106.351, concerning Salt Water Disposal (Petroleum), requires registration of new salt water disposal facilities with the commission using the PI-7 form unless the facility processes the water without exposing it to the atmosphere or processes 540,000 gallons or less of salt water per day. This amendment requires registration only and should have no economic effect. These two amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amendment to §106.477, concerning Anhydrous Ammonia Storage, clarifies which restrictions of the exemption apply to permanent and nurse tanks and which apply to permanent tanks only. The commission believes that this clarification should have little substantial effect on users of the exemption. This amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This adoption does not exceed a standard set by federal law and is not specifically required by state law. Exemptions from permitting are not addressed in federal law.

This adoption falls within the commission's authority under Texas Health and Safety Code, §382.057, to establish conditions to allow an exemption from permitting.

This adoption does not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning standard exemptions.

These rules are adopted under a specific state law. The commission has the statutory authority to adopt rules concerning exemptions from permitting under Texas Health and Safety Code, §382.057.

#### TAKINGS IMPACT ASSESSMENT

The new §106.226, concerning Paints, Varnishes, Ink, and Other Coating Manufacturing, restricts emissions through limitations on material use and has been reorganized. These changes should make the exemption easier to use. The revisions restrict the use of selected heavy metals as pigmentation in paints and inks to 0.1% by weight. This limitation generally reflects current operating practice, and industry work groups agree with the commission that the reorganized section will not have a significant economic effect and should not increase regulatory, or private property burden. This adoption is in response to a real and substantial threat to public health and safety, is designed to significantly advance the health and safety purpose, and does not impose a greater burden than is necessary to achieve the health and safety purpose.

The new §106.375, concerning Aqueous Solutions for Electrolytic and Electroless Processes, allows the same metal plating operations as the repealed section it is replacing. The revision restricts how certain metal plating operations are conducted with the purpose of limiting emissions of HCl mist and clarifies the existing prohibition against emissions of chromium. The commission does not anticipate that the revised section would cause a significant expense of capital for compliance. The section requires that aqueous solution tanks be operated under specific conditions to qualify for the exemption. Compliance with the restrictions may impose additional operational costs for those facilities wishing to operate under the exemption. Facilities that cannot meet the restrictions and could not use the exemption would be faced with the cost of obtaining a construction permit. The new section requires fume venting through a four-foot vertical stack, and the commission estimates the cost of stack installation to be approximately \$300 per foot. These amendments do not apply to existing facilities. The revisions are adopted to address a real and substantial threat to public health and safety, are designed to significantly advance the health and safety purpose, and do not impose a greater burden than is necessary to achieve the health and safety purpose.

The amendment to §106.435, concerning Classic or Antique Automobile Restoration Facility, is administrative to correct a cross-reference and has no substantial effect. The amendment to §106.351, concerning Salt Water Disposal (Petroleum), requires registration of new salt water disposal facilities with the commission using the PI-7 form unless the facility processes the water without exposing it to the atmosphere or processes 540,000 gallons or less of salt water per day. The registration is the only requirement added to this exemption. This amendment therefore does not impose a physical invasion or require a dedication or exaction of private real property.

The amendment to §106.477, concerning Anhydrous Ammonia Storage, clarifies which restrictions of the exemption apply to permanent and nurse tanks and which apply to permanent tanks only. The commission believes that this clarification should have little substantial effect on users of the exemption. This amendment requires that the condition of connectors and valves used on ammonia tanks be secure and leak-free. This does not impose a physical invasion or require a dedication or exaction of private real property.

#### COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goal 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas. This action is consistent with 31 TAC §501.14(q), which requires the commission to protect air quality in coastal

areas. These amendments will not authorize any increase in air emissions.

#### HEARING AND COMMENTERS

The commission conducted a public hearing concerning these adoptions on March 16, 1998, in Austin, and did not receive any oral testimony. The commission received written comments from Bracewell and Patterson representing the *Houston Chronicle (Chronicle)*; Curtis, Mallet-Prevost, Colt, and Mosle (CMCM); the United States Environmental Protection Agency (EPA); Kaspar Electroplating Corporation (Kaspar), Lockheed Martin Tactical Aircraft Systems (Lockheed); and the Railroad Commission of Texas (RRC).

The *Chronicle* commented that the new §106.226 appears to contain an overlap with §106.418, regarding printing operations. The commenter stated that it is apparent that §106.226 was not intended to authorize on-site ink mixing at printing facilities and that these operations are part of the normal printing processes which can already be authorized by §106.418. It requested that the commission clarify this distinction either in the final §106.226, or in the explanatory comments accompanying the rule.

The commission agrees with the interpretation. The respective sections apply to distinct and separate operations. Section 106.226 is only intended to authorize facilities that manufacture paints, inks, and similar material. Section 106.418 is intended to authorize certain types of printing facilities and the incidental processes necessary to operate these facilities, such as final ink preparation and loading into the facility.

The commission received a request for clarification that the material use limitations in the proposed §106.226(1)(A) and (B) apply only to coating manufacturing operations at a site. The commenters believed that without clarification, the limitations could be mistakenly applied to unrelated materials at facilities totally unrelated to coating manufacturing which might be located at the same site. For example, they argued that the staff probably did not intend to limit, by this exemption, the amount of inert powdered materials, such as clay, which are added to a water filtration system as a binding agent, especially if the water filtration facility was entirely unrelated to the coating manufacturing facility.

The commission intended that the material use restriction only apply to the exempted coating operation and has added the clarifying language to §106.226(1)(A) and (B).

Kaspar and Lockheed commented that the use of chromic acid in electroless processes does not result in the air emission of chromium unless the solution is bubbled, misted, or agitated, and that the blanket prohibition on the use of chromic acid should be removed. They also commented that the term "alodining" is a proprietary process, and if the proposed wording to the exemption is adopted it would only allow one manufacturer's product. They suggested the term "chromate conversion coating process."

The commission agrees that emissions of chromium or any other heavy metal are insignificant in electroless processes and any process where the aqueous solution does not bubble or mist. The commission recognizes that there may be steps in those processes which do not cause bubbling or misting and has included language allowing the use of chromic acid where the solution is not bubbled, misted, or similarly agitated. The commission agrees with the commenters about the use of the

term "alodining" and has made the change in the rule language to include all chromate conversion coating processes.

Kaspar commented that §106.375(1)(a) apparently includes electroplating in the term "electrodeposition." Furthermore, Kaspar commented that "electrodeposition" does not ordinarily translate to include electroplating. Therefore, the commenter suggested adding the word "electroplating" to paragraph (1)(A).

The commission intended to include electroplating, other than chromium electroplating, as a process which is authorized by this exemption, and did, in fact, assume that electrodeposition could include electroplating. For clarification and given the limitation on the use of chromic acid, the commission has inserted the word "electroplating" as one of the operations authorized under §106.375.

Kaspar commented that chromium should be added to §106.375 as a metal authorized for plating or stripping from any substrate, since the EPA has found that decorative chrome plating emissions can be effectively controlled by fume suppressants. The commenter stated that cadmium, which is authorized, is more insidious and toxic than chromium. Similarly, it suggested that the wording in §106.375(2)(C) be changed to clarify that aqueous solutions of chromic or HCl baths only are restricted for use in an enclosed building.

The commission agrees that properly controlled, small decorative chromium electroplating facilities are insignificant sources of emissions, and §106.376 specifically authorizes decorative chromium electroplating facilities. The commission disagrees that emissions of cadmium authorized by this exemption would necessarily be more toxic than chromic acid or chromate emissions. Based on data concerning health, odor, nuisance potential, vegetation damage, or corrosion, commission toxicologists consider cadmium and chromium identical in their potential for effects. Furthermore, the plating efficiency of chromium electroplating is significantly lower than the efficiencies of other plating processes, including cadmium, resulting in significantly higher chromium emission rates. Consequently, the commission disagrees with the suggested changes, which would have the effect of authorizing all chromium electroplating under this exemption from permitting, regardless of size or conditions. The commission does not believe an exemption from permitting to be an adequate regulatory tool for all chromium plating operations. Section 106.375 specifically does not authorize the use of chromic acid in any electrodeposition and electroplating process. The commission intends that emissions from HCl tanks and from any agitated aqueous solutions containing chromic acid must be contained within an enclosed building and exhausted through a vertical stack or controlled with a fume suppressant. The commission has added language to §106.375(2) that clarifies that intent.

CMCM commented that the temperature and concentration limits on HCl in §106.375(2) do not reflect current operating conditions in the industry. To provide a wider range of operation, the commenter suggested an upper limit on HCl partial pressure of 0.59 millimeters of mercury (mmHg), which is the partial pressure of HCl at 100 degrees Fahrenheit and 19% concentration.

The commission agrees that emission rates are directly related to the partial pressure of the pollutant gas and that an HCl concentration of 0.59 mmHg roughly corresponds to an HCl concentration of 19% at a temperature of 100 degrees Fahrenheit. The commission has determined that a partial pressure

for HCl above that corresponding with this concentration and temperature would cause emissions in an amount requiring a more detailed engineering and toxicological review to determine whether or not the emissions are harmful to human health and would not be eligible to claim exemption from permitting under this section. The commission wants to provide as much operational flexibility as possible for insignificant emissions and has modified the requirements of this section to add the option allowing a range of temperature and concentration of HCl, provided that the acid remains at or below a partial pressure of 0.5 mmHg.

It is the commission's understanding that partial pressure is most commonly determined by process operators by finding the pressure on a graph or table that corresponds to a specific temperature and solution concentration. The graphs and tables are based on a logarithmic curve which is difficult to read or interpolate to an accuracy beyond 0.1 mmHg. To allow for a margin of error in reading the graphs and interpolating tables, the commission is fixing the regulated limit at 0.5 mmHg so that a slight error will still result in a good chance of the partial pressure remaining at or below 0.59 mmHg.

The commission is also requiring that records demonstrating compliance with the added option be kept and retained for the most recent 24-month period.

Lockheed commented that the requirements for either ventilation or use of a fume suppressant should apply only to the processes listed in §106.375(1)(A). The argument for this is that a simple soap and water solution might be used in the processes included in §106.375(1)(B). Lockheed also commented that the current §106.375(2)(C) is redundant and confusing. Specifically, the commenter found the wording "aqueous solutions shall be used in an enclosed building" followed by "if the doors and windows...are open for ventilation" to be confusing. It stated that ventilation requirements are often controlled by the Occupational Safety and Health Administration and that doors will always be opening and closing for access, and questioned how the commission would determine if the opening was for ventilation.

The commission agrees that the proposal might require ventilation or a fume suppressant for processes, or steps in processes, where the aqueous solution is harmless and control requirements would be unnecessary or ineffective. The commission believes that, other than HCl, there are insignificant emissions from other commonly used aqueous solutions in which bubbling or misting does not occur due to electrical current, air agitation, or other factors. Section 106.375(2) has been modified to remove unnecessary control from harmless operations and to clarify what operations will require control.

EPA commented that Texas had never submitted the base regulation for the initial adoption of the standard exemption list as a revision to the state implementation plan (SIP). EPA also requested that the commission include a basis for each provision and condition of the new or revised section and that meeting the operation and production limits of the sections will result in emissions less than the 25-ton per-year emission threshold that qualifies a source for exemption from permitting. EPA also stated that this submittal should include assurances that emissions will not interfere with achieving or with the maintenance of air quality standards. EPA concluded its remarks by stating that several sections lacked appropriate

monitoring and recordkeeping requirements and specifically mentioned §§106.226, 106.351, and 106.375.

The current list of standard exemptions was compiled after ongoing evaluations by the commission of the effect of a source category on air quality, and they were determined to be insignificant under specified restrictions. The evaluation was based on engineering review, experience with similar or identical sources, and inspections of source operations. In recent years, the commission has reevaluated the exemptions applied to larger facilities or facilities using substances that are potentially harmful with the intent of ensuring that the exemption is protective of human health. This reevaluation was based, in part, on computer dispersion modeling and has resulted in the commission proposing modifications to exemptions applied to operations using heavy metals, ammonia, and other potentially harmful substances. The overall result of the evaluations is that the exemptions remain protective of human health and are not significant contributors to air quality deterioration.

The commission has not submitted standard exemptions as SIP revisions since the creation of Chapter 106 in mid-1996. Because the exemptions are used by insignificant sources, the commission desires that monitoring and recordkeeping imposed on these sources remain at a minimum. The commission also believes that it has a state new source review (NSR) program that is equivalently enforceable with federal programs. The standard exemptions are part of that NSR program. The commission believes that it is important that the protectiveness review of standard exemptions continue, and that the result of that review be incorporated into the exemptions. The commission is committed to resolving the issue of the respective roles of the state and federal permitting programs, but believes that this resolution should occur in a separate, non-rulemaking action. This will prevent any delay in amending remaining standard exemptions under protectiveness review.

The RRC commented that the definition of "facility" in 30 TAC §116.10 is very general and does not clearly identify the specific facilities covered by the exemption. The RRC interprets "facility" to mean a single injection well and associated flow lines. In accordance with this interpretation, the commenter believes that the amendment to §106.351 will have minimal impact because only two RRC-permitted facilities currently in existence exceed the 540,000 gallons per day limitation. The RRC contends that if the commission interprets the term "facility" as used in §106.351 to mean something other than a single injection well and associated flow lines, a more precise definition must be promulgated and published for comment.

The definition of facility used in this exemption is contained in the Texas Clean Air Act (TCAA), §382.003. That definition states that a facility means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source. Further, a "source" is defined in the TCAA as the point of origin of air contaminants. The RRC interpretation of the term "facility" is consistent with the commission's application of the term. The registration of facilities as required by this amendment is not an attempt to reinterpret the term, but is a method of determining when the salt water throughput at a site approaches or exceeds 540,000 gallons per day. Through dispersion modeling, the commission has determined that salt water disposal sites (which may contain several facilities) handling 540,000 gallons of containing water per day with the highest concentration of VOC expected will readily meet the emission limitations in 30 TAC §106.4, concerning Require-

ments for Exemption from Permitting. This section establishes the threshold determining if a source is significant. New facilities opened at existing sites where salt water disposal facilities are currently operating could bring that site closer to the emissions level where the site could be considered not only significant, but a major source under Title V of the Federal Clean Air Act Amendments. The commission requires registration information to track and analyze these potential major sources, many of which are located near or within the Houston and Beaumont ozone nonattainment areas. Sites emitting 25 tons per year of VOC would be considered "major" in these areas. Twenty-five tons per year is also the significant source threshold in §106.4.

Because §106.351 may authorize several facilities commonly found at a salt water disposal site, such as tanks, open air ponds, and piping, the commission concurs that the intent of the exemption must be clarified. The commission has revised the text of the exemption to clarify that the registration provision pertains to all facilities at a saltwater disposal plant site when authorization is sought under this exemption. It should be noted that the registration requirement is not retroactive and will only affect facilities seeking authorization under this exemption upon adoption of the amended rule language.

The RRC commented on the 1/4-mile limitation that is contained in this exemption and others involved in oil and gas processes which handle sour gas. Sour gas is defined as a natural gas containing more than 1.5 grains of hydrogen sulfide or more than 30 grains of total sulfur per 100 cubic feet. The RRC stated that it specifically regulates sour gas facilities for protection of the public in the event of a release through its rules in 16 TAC §3.36, concerning Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas, and that §3.36 adequately addresses acute public health and safety issues related to releases from sour gas facilities. The RRC contends that if the 1/4-mile limitation is meant to address acute public health and safety concerns, the commission should defer to §3.36 and delete the 1/4-mile limit from this and other exemptions. The RRC relayed that staff members from the commission and RRC met and discussed this issue last year and agreed that it would be appropriate to revisit the need for the 1/4-mile limit when exemptions were proposed for amendment. The commenter requested clarification on the basis for the limitation if the 1/4-mile limit is not meant to address acute public health and safety concerns.

The 1/4-mile setback distance contained in this section for any new facility processing salt water which emits a sour gas is not meant to address acute public health and safety issues. Instead, it is intended to reduce the possibility of nuisance conditions due to emissions from new facilities which handle sour gas. The 1/4-mile setback has been in the exemption since 1986 and has served as an appropriate distance to mitigate odor complaints commonly associated with hydrogen sulfide and other sulfur compounds. The commission agrees that §3.36 adequately addresses acute public health and safety issues primarily by limiting public access to operating wells, but the section cannot adequately substitute for the commission's 1/4-mile setback.

The RRC commented that the relationship between the 540,000-gallon limit on salt water delivery and the corresponding air emissions is not clear. The RRC requested that this relationship be more fully developed.

Salt water with volatile organic compounds (VOCs) in solution will release a fraction of that VOC to the atmosphere as it comes out of solution. Dispersion air modeling predicts that a typical salt water disposal site handling less than 540,000 gallons per calendar day of saltwater containing the highest contaminant concentrations expected will readily meet the emission limits established in 30 TAC §106.4 and will be protective of human health and the environment. The 540,000-gallon limit serves as a cut-off for when registration of the exemption is required with the commission. This limit was placed in the exemption so that the smaller salt water disposal facilities which handle lesser amounts of salt water, as well as those that have fully enclosed delivery and storage operations, would not need to provide notice to the commission.

#### STATUTORY AUTHORITY

The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

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-9811192

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



#### STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the Texas Natural Resource Conservation Commission (commission) to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

§ 106.226. *Paints, Varnishes, Ink, and Other Coating Manufacturing (Previously SE 125).*

Coating manufacturing operations including raw material storage, weighing, mixing, milling, grinding, thinning, and packaging are exempt, provided the conditions of this section are met. Coating manufacturing is defined as combining ingredients that are manufactured off-site to make paints, varnishes, sealants, stains, adhesives, inks, pigments, maskants, and paint strippers, etc. Resin manufacturing is not exempt under this section.

(1) Materials usage shall not exceed the following rates:

(A) 345,000 gallons per year of solvent for all operations at a coating manufacturing site; and

(B) 200,000 pounds of dry powder per year for all operations at a coating manufacturing site.

(2) Operations involving powders which contain more than 0.1% by weight of chromium, cadmium, asbestos, lead, arsenic, cobalt, or strontium are not authorized by this section.

(3) The following conditions must be met to prevent and control emissions.

(A) There shall be no visible emissions from any emission point.

(B) Bags or sacks of dry powders shall be opened within an enclosed bag slitter or within an enclosed area.

(C) Material transfer, storage operations, or other similar operations shall be conducted in enclosed or covered containers which are opened only as necessary for transfer of ingredients.

(D) Mixing, milling, packaging, and filling operations shall be conducted under a hood or within an enclosure designed to capture emissions, which shall then be vented externally or through a carbon adsorption system.

(E) Operations which involve dry powders or pigments shall be vented through a filter.

(F) Any spills of dry powders or solvents shall be cleaned up promptly in a manner designed to control emissions.

(G) Waste materials shall be stored in covered containers and disposed of properly.

(4) Emissions from any operation which are vented externally shall be exhausted using forced air through a stack with an unobstructed vertical discharge. The stack must be, at a minimum, four feet above the peak of the roofline.

(5) The owner or operator of the facility shall keep records of all liquid and solid material usage rates on a monthly basis to demonstrate compliance with paragraph (1) of this section. The usage data shall be maintained for the most recent 24-month period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### Subchapter O. Oil and Gas

#### 30 TAC §106.351

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the Texas Natural Re-

source Conservation Commission (commission) to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

§106.351. *Salt Water Disposal (Petroleum) (Previously SE 65).*

Salt water disposal facilities used to handle aqueous liquid wastes from petroleum production operations and water injection facilities are exempt, provided that the following conditions of this section are met.

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

(4) Before construction of the facility begins under this section, registration of the exemption shall be submitted to the commission's Office of Air Quality in Austin using Form PI-7, unless one of the following exceptions applies:

(A) all delivery of salt water to the site takes place through enclosed hoses or lines, and all storage and handling of salt water takes place in enclosed conduits, vessels, and storage, so that the salt water is not exposed to the atmosphere; or

(B) delivery of salt water from outside a site to all facilities at a site in any calendar day does not exceed 540,000 gallons.

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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Kevin McCalla

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## Subchapter P. Plant Operations

### 30 TAC §106.375

#### STATUTORY AUTHORITY

The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the Texas Natural Resource Conservation Commission (commission) to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

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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#### STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the Texas Natural Resource Conservation Commission (commission) to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

§106.375. *Aqueous Solutions for Electrolytic and Electroless Processes (Previously SE 41).*

Equipment using aqueous solutions is exempt, providing the conditions of this section are met.

(1) This section authorizes the following operations:

(A) anodizing, chromate conversion coating processes, electroplating, electrodeposition, electroless plating, electrolytic polishing, and electrolytic stripping, as follows.

(i) For plating onto or stripping from any basis substrate, only brass, bronze, cadmium, copper, iron, lead, nickel, tin, zinc, and precious metals may be used.

(ii) Chromic acid shall not be used in any step of a process which involves electrical current, air agitation, or any other factor which causes the chromic acid to bubble or mist.

(B) cleaning, electroless stripping, etching, or other surface preparation and finishing, not including chemical milling or electrolytic metal recovery and reclaiming systems.

(2) Operating conditions.

(A) Hydrochloric acid tank operating conditions shall not exceed:

(i) a temperature of 100 degrees Fahrenheit and a hydrochloric acid concentration of 19.0% by solution weight; or

(ii) a partial pressure of 0.5 millimeters of mercury.

(B) Hydrochloric acid in any state, and any aqueous solution which bubbles or mists due to electrical current, air agitation, or any other factor shall be used in an enclosed building. If the doors and windows of the building are open for any reason other than temporarily for access, emissions shall either be:

(i) captured and exhausted using forced air through a stack with an unobstructed minimum vertical discharge of four feet above the peak of the roofline; or

(ii) controlled with a fume suppressant.

(3) If a facility cannot comply with the hydrochloric acid temperature and concentration limits in paragraph (2)(A)(i) of this section, then to demonstrate compliance with paragraph (2)(A)(ii) of this section, the maximum hydrochloric acid temperature and

concentration for each tank shall be recorded daily. At least once per month, the recorded data shall be converted to partial pressure. All data shall be maintained for the most recent 24-month period.

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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Kevin McCalla

Director, Legal Division

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## Subchapter S. Surface Coating

### 30 TAC §106.435

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the Texas Natural Resource Conservation Commission (commission) to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

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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Kevin McCalla

Director, Legal Division

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For further information, please call: (512) 239-1966



## Subchapter U. Tanks, Storage, and Loading

### 30 TAC §106.477

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the Texas Natural Resource Conservation Commission (commission) to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the require-

ments of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

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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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board

#### Chapter 368. Flood Mitigation Assistance Program

##### 31 TAC §§368.1-368.11

The Texas Water Development Board adopts new §§368.1-368.11, comprising new 31 TAC Chapter 368, concerning the Flood Mitigation Assistance Program. Section 368.4 is adopted with changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5944). Sections 368.1-368.3 and §§368.5-368.11 are adopted without changes and will not be republished. The new sections are adopted to govern the board's administration of grants for planning and projects under the Flood Mitigation Assistance program administered nationally by the Federal Emergency Management Agency.

Section 368.1 provides definitions of terms in the Chapter. The adopted definitions are consistent with existing statutory definitions and usage.

The definition of "board" follows the definition of Texas Water Development Board in Texas Water Code, §6.001(1).

The definition of "Executive Administrator" follows that of Texas Water Code, §6.001(2). Authorization of the delegation of duties is allowed by Texas Water Code, §6.183. This definition recognizes that many ministerial duties are performed by the staff of the Executive Administrator, who is the administrative head of the board.

The definition of "FEMA" follows the definition of Federal Emergency Management Agency as created in Executive Order No. 12148 (1979).

The definition of "FMA" follows the definition of Flood Mitigation Assistance program in 44 CFR §4104(c).

The definition of "NFIP" follows the definition of National Flood Insurance Program in 42 U.S.C. §4011.

The definition of "community" follows that of 42 U.S.C. §4104c(k).

Section 368.2 explains that the board has been named by Governor Bush as the State of Texas' point of contact for the



FMA program and defines the scope of this subchapter as governing the board's responsibilities in administering the FMA program.

Section 368.3 defines the purpose of the FMA program. The defined purpose is consistent with the purpose defined by the federal government in 42 U.S.C. §§4104c, 4104d. The purpose of the FMA program is to assist state and local governments in funding projects that will reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures that are insured or are insurable under the NFIP. The FMA program also has the purpose of providing funding for planning projects that will reduce or eliminate the long-term risk of flood damage and to fund technical assistance to FMA program applicants.

Section 368.4 describes the method by which the board will solicit and accept FMA grant applications. Pursuant to FEMA rules, each state is only eligible for a certain sum of FMA grant money each fiscal year. In order to grant the money to the most deserving projects, FEMA requires each state to develop grant application procedures and procedures for notifying communities of grant fund availability. Section 368.4 has been adopted with changes based on a comment received to allow the board to more fully utilize the available federal monies each fiscal year and to effectively prioritize the applications. As adopted, §368.4 describes how the board will notify communities of available FMA grant monies and provide a date by which applications must be sent. If an insufficient number of applications are received by the published deadline, the board may accept applications that are past the deadline date or republish the notice with a new deadline in order to have a sufficient number of applications to utilize the grant money available for that fiscal year and to have a sufficient number of applications to effectively use federal funds.

Section 368.5 provides eligibility criteria. For planning grants, only communities which are not on probation or not suspended under the National Flood Insurance Program are eligible. Pursuant to federal regulations, grants will not be made to develop new or improved floodplain maps. A community is eligible for project grants if it is not on probation or suspended under NFIP, and if it has received FEMA approval of its flood mitigation plan. The section specifies that projects are eligible for planning grants only if they are: cost effective; in conformance with various federal requirements including Floodplain Management and Protection of Wetlands, environmental considerations, and floodplain management regulations; and located physically in a participating NFIP community. This section parallels the eligibility requirements promulgated by FEMA and found at 44 CFR Part 78.

Section 368.6 specifies the components for flood mitigation plans, which follow the federal regulations at 44 CFR §78.5. The section requires that flood mitigation plans include several elements. The plans must have a description of the planning process and public involvement in that process, a description of the existing flood hazards and an identification of the flood risks, including estimates of the number and type of structures at risk, what properties are at risk for repetitive losses, and the extent of flood depth and damage potential. The section also requires the flood mitigation plans to include the applicants' floodplain management goals, an identification and evaluation of cost-effective and technically feasible mitigation actions considered, a presentation of the strategy for reducing flood risks and continued compliance with the NFIP, procedures for en-

uring implementation, procedures for reviewing progress and procedures for recommending revisions to the plan. Lastly, the section requires flood mitigation plans to have documentation of formal plan adoption by the legal entity submitting the plan. The section specifies that the executive administrator will forward submitted flood mitigation plans to the FEMA regional director for approval as required by FEMA regulations.

Section 368.7 specifies the types of projects eligible for FMA funding. This section is based upon the requirements found in 44 CFR §78.12. FEMA and consequently the board will only approve applications for grant funds for the following types of projects: acquisition of insured structures and real property and easements restricting property use; relocation of insured structures; demolition and removal of insured structures; elevation of insured structures; other activities to bring insured structures into floodplain management compliance; minor physical flood mitigation projects; and beach nourishment activities. This section follows the FEMA guidelines on eligible projects, found in 44 CFR Part 78.

Section 368.8 provides for the board to approve and finance planning grants from the board's research and planning fund using the procedures and criteria in Chapter 368. It provides criteria for evaluating and awarding planning grants to include the greatest flood risk to be addressed by the plan, demonstrated interest and commitment to mitigation, highest rate of NFIP participation, legal authority to plan for and control flooding, and the effect of planning on overall flooding. The section specifies that planning grant work must be completed within three years of contract execution, a requirement of the FEMA program. The board must evaluate each application for compliance with FEMA's rules found in 44 CFR Part 78. FEMA will only allocate \$300,000 in planning funds per year for Texas. Of this money, it only allows a maximum of \$50,000 to be given to a single community at one time and such a grant can only be made once every five years. Due to the limited funds for planning, the board must evaluate plans and approve only those plans that meet the federal requirements. The criteria are designed further to target those communities most in need of the funds based on flood risk and those communities most likely to pursue projects based on their commitment to mitigation. The rate of NFIP participation is evaluated because one goal of the FMA program is to reduce repetitive loss under NFIP. The criteria rank applications highest which most strongly support the goals of the FMA program.

Section 368.9 provides procedures for project grant evaluation by the executive administrator and the board, and for forwarding grant award recommendations to FEMA. Criteria for evaluating the project grant awards include: the extent the project reduces future NFIP claims; projects which benefit areas with the greatest flood risk; projects with the highest cost/benefit ratio; projects which benefit the greatest number of NFIP-insured structures; the extent the project results in a long-term flooding solution and requires minimum maintenance; whether the project affects structures in an identified floodway or floodplain; the extent to which the sponsor is providing greater than the required 25% cost share; whether the applicant or community participates in the Community Rating System; and the multi-objective nature of project. As with §368.8, FEMA restricts the amount of funds available. No community can receive more than \$3,300,000. Due to the limited funds for projects, the board must evaluate the applications and prioritize for FEMA only those applications that meet the federal requirements. This

rule, therefore, follows 44 CFR Part 78. The criteria are designed to target areas with greatest flood risk, to reduce repetitive loss under NFIP, to evaluate the effectiveness of projects, and to weigh the local contributions. The criteria rank applications highest which most strongly support the goals of the FMA program.

Section 368.10(a) provides for a required 25% local cost share, of which not more than one-half may be in-kind services. This is a reiteration of 44 CFR §78.13(a).

Subsections (b) and (c) describe the limitations imposed by federal regulation on the total amount of grant funds available. 44 CFR Part 78 restricts planning grants to \$50,000, with a community being eligible for a planning grant nor more than once every five years and project grants are limited to \$3.3 million per community per five-year period, with a total to all communities in the state of not to exceed \$20 million.

Section 368.11 provides terms and conditions for contracts including meeting applicable federal requirements. FEMA requires grantees to comply with 44 CFR Parts 13 and 14 once grants are made.

One comment was received in writing by the board. The Harris County Flood Control District made a comment requesting a change to §368.4 so that communities would know they could submit applications at any time and not just when the board has published notice that funds are available. To effect this, the district recommended that §368.4 be modified to state that unsolicited applications would be accepted at any time. The board has made a change to the rule based upon this comment, but not to the extent recommended by the Harris County Flood Control District. Due to the board's responsibility, as point of contact for the FMA program, of prioritizing applications for FEMA's review, applications must be compared to each other. If applications come in at any time, the board will not be able to effectively prioritize them for FEMA and limited federal grant money will not be used in the most effective manner. The board did change the rule, though, to allow for acceptance of applications that are received after a published deadline if the number of applications received before the deadline is too few to allow effective utilization of available funds. The board also amended the rule to state that it may republish notice of available funds with a new deadline in order to obtain a satisfactory number of applications.

The new sections are adopted under the authority granted in: Texas Water Code, §6.101 and Texas Water Code, Chapter 15, Subchapter F, which require the board to adopt rules necessary to carry out the powers and duties of the board and for administration of the research and planning fund and under Texas Government Code, Chapter 742 which provides for state coordination of local applications for federal funds.

§ 368.4. *Grant Applications and Notice.*

(a) As funds become available through FEMA, the executive administrator will publish notice in the *Texas Register* requesting applications from eligible communities for planning grants and/or project grants. Applicants shall submit application(s) in the form and in the numbers prescribed by the executive administrator. Applicants for planning grants shall provide notice of their grant applications in the manner required by §368.8 of this title (relating to Notice Requirements). The executive administrator may request additional information needed to evaluate the application, and may return any incomplete applications.

(b) Applications received by the deadline published in the *Texas Register* will be evaluated as described in this chapter. If there is an insufficient number of applications to allow effective utilization of federal funds, the board may republish notice and set a new deadline for applications or accept applications past the original deadline.

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 17, 1998.

TRD-9811294  
Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
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For further information, please call: (512) 463-7981

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**TITLE 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

**Chapter 3. Tax Administration**

**Subchapter B. Natural Gas Production Tax**

**34 TAC §3.21**

The Comptroller of Public Accounts adopts an amendment to §3.21, concerning exemption or tax reduction for high-cost natural gas, without changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4234).

This section is being amended pursuant to Senate Bill 862, 75th Legislature, 1997, which amended the application filing requirements for the high-cost gas well exemption or tax reduction. The bill also requires an adjustment to the amount of the exemption or reduction if an application is filed after the deadline.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §201.057.

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 15, 1998.

TRD-9811120  
Martin Cherry  
Chief, General Law  
Comptroller of Public Accounts  
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For further information, please call: (512) 463-4062

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## Subchapter EE. Boat and Motor Sales and Use Tax

### 34 TAC §3.741

The Comptroller of Public Accounts adopts an amendment to §3.741, concerning imposition and collection of tax, with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4236).

House Bills 966 and 2542, 75th Legislature, 1997, amended the Parks and Wildlife Code, §31.003(1), effective September 1, 1997, to include in the definition of boat, all boats not more than 65 feet in length. The Tax Code references the Parks and Wildlife Code in defining a boat taxable under Chapter 160.

No comments were received regarding adoption of the amendment.

A grammatical error in paragraph (b)(1) was corrected.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §160.001.

#### §3.741. *Imposition and Collection of Tax.*

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

(1) Accessories - Nonessential tangible personal property attached to a boat for the convenience or comfort of the operator or passengers. For purpose of this rule, the term "accessories" includes, but is not limited to, radios, mirrors, transom-mounted ladders, electric trolling motors, and depth finders.

(2) Dealer - A person or entity engaged in the business of buying, selling, or exchanging boats or boat motors at an established or permanent place of business in this state. At each such place of business a sign must be conspicuously displayed showing the name of the dealership so that it may be located by the public, and sufficient space must be maintained for an office, service area, and display of boats and boat motors.

(3) Department - The Texas Parks and Wildlife Department.

(4) Manufacturer - A person or entity engaged in the business of manufacturing new and unused boats and boat motors for the purpose of sale or trade.

(5) Retail sale - Any sale of a boat or boat motor other than a sale in which the dealer or manufacturer acquires the boat or boat motor for the exclusive purpose of resale. Dealers and manufacturers, as defined, are the only persons or entities that may acquire a boat or boat motor for resale.

(6) Tax assessor-collector - Any of the county tax assessors-collectors in the State of Texas.

(7) Taxable boat - Any watercraft, other than a seaplane on water, not more than 65 feet in length. This includes federally documented boats, motorboats, sailboats, jet skis, and boats designed to accommodate an outboard motor. Excluded from this definition are canoes, kayaks, rowboats, inflatable rafts, or other watercraft designed to be propelled by paddle, oar, or pole. These excluded watercraft are taxed under Limited Sales, Excise and Use Tax, unless some other exemption applies.

(8) Taxable motor - Any self-contained internal combustion propulsion system of any horsepower, excluding fuel supply, used to propel a watercraft, that is detachable from the boat. Electric boat motors are excluded.

(9) Total consideration - The amount paid or to be paid for a taxable boat or boat motor, including all accessories attached at the time of or before the sale. This amount includes the costs of transportation before the sale and any manufacturer's or importer's excise tax imposed by the United States government. This amount does not include any separately stated finance charges, service charges, or other interest charges. Also excluded from total consideration will be the value of a taxable boat or boat motor taken by the seller as all or part of the consideration for the sale of the boat or boat motor. No other tangible, intangible, or real property will be excluded from total consideration. Also excluded from total consideration are charges for transportation of the boat or boat motor after the sale.

(10) Use - Any storage or other exercise of rights of ownership in this state by any person or entity, excluding the storage, display, or holding of a boat or boat motor exclusively for sale by a dealer or manufacturer, as defined in this subsection.

#### (b) General principles.

(1) The purchase of a taxable boat and boat motor and all accessories attached thereto at the time of sale is subject to the boat and boat motor sales and use tax (Tax Code, Chapter 160). The purchase of a taxable boat or boat motor for purposes of rental is subject to Tax Code, Chapter 160.

(2) The purchase of accessories for a boat and boat motor attached after the time of sale of the boat or boat motor is subject to the limited sales, excise, and use tax (Tax Code, Chapter 151). The rental of a taxable boat or boat motor is subject to Tax Code, Chapter 151.

(3) The purchase of tangible personal property is subject to the limited sales, excise, and use tax, if no item can be identified as a boat or boat motor even if the combination of items of tangible personal property becomes a boat or boat motor. If items of tangible personal property are combined to produce a boat or boat motor, the initial titling or registration of the boat or boat motor in the name of the person who produced the boat or boat motor is not subject to the provisions of the boat and boat motor sales and use tax. If, however, the boat or boat motor is titled or registered in any other person's name, the transfer is subject to the provisions of the boat and boat motor sales and use tax.

(4) Safety equipment required by the Parks and Wildlife Code, §§31.064-31.071, including life preservers and fire extinguishers, purchased with a taxable boat or boat motor are considered to be attached to the boat or boat motor and subject to the provisions of the boat and boat motor sales and use tax.

#### (c) Imposition of the tax.

(1) A sales tax is imposed on each retail sale of a taxable boat or boat motor in this state. The tax is the obligation of and shall be paid by the purchaser of the taxable boat or boat motor.

(2) The tax rate is 6.25% of total consideration paid or to be paid.

#### (d) Payment of the tax.

(1) After the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor, if the seller collects the tax from the purchaser, the seller must remit the tax to either a

county tax assessor-collector or to the department within 20 working days from the date the taxable boat or boat motor is delivered to the purchaser.

(2) After the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor, the seller may give the original affidavit to the purchaser. The purchaser is then required to remit the tax to either a county tax assessor-collector or to the department within 20 working days from the date the taxable boat or boat motor is delivered to the purchaser.

(3) The payment of the boat or boat motor use tax is the responsibility of the user and is due within 20 working days after the date that the taxable boat or boat motor is brought into this state.

(e) Purchase of accessories/components for resale.

(1) Items combined into a boat or boat motor. A resale certificate as provided for in the Limited Sales, Excise, and Use Tax Act may be used in purchasing tangible personal property to be combined into a boat or boat motor held for sale in the purchaser's regular course of business. This includes all accessories that are included in a single sales price for the accessory, boat, and boat motor. These accessories include water skis and tow ropes. The lump-sum sales price will be subject to the boat and boat motor sales and use tax.

(2) Accessories purchased to be attached to a boat or boat motor that is not subject to the boat and boat motor sales and use tax (boats over 65 feet in length), are subject to the limited sales, excise, and use tax. See also §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), and §3.297 of this title (relating to Carriers).

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 15, 1998.

TRD-9811122

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 1. Organization and Administration

##### Subchapter A. Objective, Mission, and Program

###### 37 TAC §1.4

The Texas Department of Public Safety adopts an amendment to §1.4, concerning personnel and employment policies, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5642).

The justification for this section will be to make the public aware of program and activity changes under the Traffic Law Enforcement Division.

The amendment clarifies and updates language in the existing rule regarding the programs of the Traffic Law Enforcement Division.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), and §411.006(4) which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the Commission, shall have the authority to adopt rules necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 1998.

TRD-9811186

Dudley M. Thomas

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2890

### Chapter 3. Traffic Law Enforcement

#### Subchapter B. Enforcement Action

##### 37 TAC §§3.22-3.24

The Texas Department of Public Safety adopts amendments to §§3.22 - 3.24, concerning Enforcement Action, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5330).

The justification for the sections will be clarification of department policy.

Amendment to §3.22(a) omits unnecessary language regarding a written warning. Amendment to §3.23(b)(2) adds residence address and date of birth as required information which must be furnished by a violator. Amendment to §3.24 reflects the nonsubstantive changes in statute from Texas Civil Statutes to Texas Transportation Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department.

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 15, 1998.

TRD-9811188

Dudley M. Thomas

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**Subchapter F. Texas Registered Vehicles Not Requiring Inspection**

**37 TAC §3.91**

The Texas Department of Public Safety adopts an amendment to §3.91, concerning NATO Agreement Vehicle Inspection Exemptions, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5331).

The justification for this section will be to exempt motor vehicles imported into the United States from a foreign country by members of a military force or civilian component that is a party to the NATO Agreement of 1953 from the Texas vehicle inspection requirements.

The amendment to subsection (b) updates the NATO member countries.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Transportation Code, §548.002 which authorizes the department to adopt rules to administer and enforce this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dudley M. Thomas  
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**Chapter 19. Breath Alcohol Testing Regulations**

**Subchapter A. Breath Alcohol Testing Regulations**

**37 TAC §§19.1-19.5, 19.7**

The Texas Department of Public Safety adopts amendments to §§19.1 - 19.5, and §19.7, concerning breath alcohol testing regulations. Sections 19.3, 19.4, and 19.7 are adopted with changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 4046). Sections 19.1, 19.2, and 19.5 are adopted without changes and will not be republished.

The justification for the amendments will be clarification in the state courts as to the interpretation of these regulations con-

cerning contested cases of driving while intoxicated, other statutory related cases, and compliance with legislative changes.

The amendments include the renumbering of paragraphs and subsections in order to delete and add language and further alphabetize the sections relating to the explanation of terms and actions. The amendments are necessary due to technological advances in instrumentation software and hardware. The amendments also bring the regulations into compliance with statutory changes that were effected during the 74th Legislature, 1995, which moved the Driving While Intoxicated (DWI) laws from Texas Civil Statutes to the Texas Transportation Code and recodified these laws.

§19.3(h) is amended to change the word "verifying" to "concerning." This one word change is intended to eliminate the possible misinterpretation that these regulations would require the technical supervisor to verify (confirm by oath) certification of techniques, methods and programs even if those techniques, etc., weren't in compliance with our requirements for certification.

In §19.4(b)(3) a minor editorial change to the text is made by inserting a space after the word "of" and before "certification," and inserting a space after the word "inactivated" and before "in."

In §19.7(k) "plus or minus 0.01gms/210 Liters" is changed for consistency to read "plus or minus 0.01g/210 Liters."

A summary of the comments received and the department's responses are as follows:

COMMENT: In §19.3(h), the word "verifying" should be changed to "concerning" in order to eliminate any possible misinterpretation that the technical supervisor would have to verify the results whether they were accurate or not because the regulations require it.

RESPONSE: The department agrees with the commentator and has changed the word "verifying" to "concerning."

COMMENT: A comment was received that in §19.7(k) the abbreviation for grams should be "g" and not "gms" as published.

RESPONSE: The department agrees with the commentator and has changed the abbreviation for consistency.

The amendments are adopted pursuant to Texas Transportation Code, §724.003, which authorizes the department and the State Office of Administrative Hearings to adopt rules to administer this chapter; and Texas Transportation Code, §724.016.

*§19.3. Certification of Techniques, Methods, and Programs.*

(a) All breath alcohol testing techniques, methods, and programs to be used for evidential purposes must have the approval of and be certified by the scientific director.

(b) Prior to initiating a breath alcohol testing program, an agency or laboratory shall submit an application to the scientific director for approval. The application shall show the brand and/or model of the instrument and reference sample device to be used and contain a resume of the technique to be followed. An on-site inspection shall be made by the scientific director or a designated representative to assure compliance with the provisions of the application. An agency applying for certification of a breath alcohol testing program must agree to:

(1) conduct such analyses only for the purposes stated in subsection (c)(8) of this section;

(2) allow access for inspection under subsection (d) of this section; and

(3) comply with subsection (f) of this section.

(c) All breath alcohol testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) a period during which an operator is required to remain in the presence of the subject. An operator shall remain in the presence of the subject at least 15 minutes before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is no longer necessary to ensure the validity or accuracy of the test result;

(2) the breath alcohol testing instrument and reference sample device must be operated by either a certified operator or technical supervisor and only certified personnel will have access to the instrument;

(3) the use of a system blank analysis in conjunction with the testing of each subject;

(4) the analysis of a reference sample, prepared by the technical supervisor or a designee of the scientific director, such as headspace gas from a mixture of water and a known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value within plus or minus 0.01g/210L, or such limits as set by the scientific director. This reference analysis shall be performed in conjunction with subject analyses;

(5) all analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L);

(6) maintenance of any specified records designated by the scientific director;

(7) supervision of certified operators and testing techniques by a technical supervisor meeting the qualifications set forth in §19.5 of this title (relating to Technical Supervisor);

(8) designation that the instrumentation will be used only:

(A) for testing subjects that are suspected of violating any statute or rule that defines intoxication in terms of alcohol concentration; and

(B) in compliance with §19.4(b), (c), and (e) of this title (relating to Operator Certification).

(d) The scientific director or a designated representative may at any time make an inspection of the approved breath alcohol testing agency to insure compliance with these regulations.

(e) Upon proof of compliance with subsections (a)-(c) of this section, certification will be issued by the scientific director. Issuance of a certificate to the certified program shall be evidence that the program possesses certified instruments and approved reference sample devices as stated in §19.7(d) of this title (relating to Explanation of Terms and Actions).

(f) Certification of any breath alcohol testing program is contingent upon the applying agency's agreement to conform and abide by any directives, orders, or policies issued or to be issued by the scientific director regarding any aspect of the breath alcohol testing program; this shall include, but not be limited to, the following:

- (1) program administration;
- (2) reports;
- (3) records and forms;

(4) site location and security;

(5) public information and demonstrations of certified breath alcohol testing instruments;

(6) methods of operations and testing techniques;

(7) instruments and reference sample devices;

(8) purposes for which testing is conducted;

(9) operators and technical supervision of operators.

(g) Certification of a breath alcohol testing program may be denied or withdrawn by the scientific director if, based on information obtained by the scientific director, a designated representative of the scientific director, or a technical supervisor, the certified agency or laboratory fails to meet all criteria stated in this section.

(h) Technical supervisors, when required, shall provide expert testimony concerning the certification of techniques, methods, and programs under their supervision in accordance with §19.7(y)(7) of this title (relating to Explanation of Terms and Actions).

#### §19.4. Operator Certification.

(a) Initial certification.

(1) In order to apply for certification as an operator of a breath alcohol testing instrument, an applicant must successfully complete a course of instruction approved by the scientific director which must include as a minimum the following:

(A) three hours of instruction on the effects of alcohol on the human body;

(B) three hours of instruction on the operational principles of the selected breath alcohol testing instrument to be used. This instruction shall include:

(i) a functional description of the testing method; and

(ii) a detailed operational description of the method with demonstrations.

(C) five hours of instruction on Texas legal aspects of breath alcohol testing;

(D) three hours of instruction on supplemental information which is to include nomenclature appropriate to the field of breath alcohol testing;

(E) 10 hours of laboratory participation using appropriate equipment. Laboratory practice will include the analysis of reference alcohol samples, as stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods and Programs), as well as the analysis of breath samples from actual drinking subjects and completion of all required records and reports needed for documentation;

(F) time spent on required examinations (approximately two hours) will be considered part of the course.

(G) if an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of paragraph (1)(A) through (F) of this subsection and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(2) Prior to initial certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily complete

examinations, to be prepared and given by the scientific director or a designated representative, which shall include the following:

(A) a written examination which shall cover the academic or lecture material presented in the course of instruction;

(B) a practical examination that shall encompass actual operation of the instrument and reference sample device on which the operator is to be certified. The examination will consist of analyzing reference samples and obtaining results on all samples within limits as set by the scientific director, plus proper completion of all required records and/or reports. If the correct value is not obtained within the prescribed limits on all of the samples and/or there is an error on any of the required records and/or reports, then the operator will be given a second set of test samples. If the correct value is not obtained on all of the second test samples within the prescribed limits and/or there is an error on any of the required records or reports the applicant has failed the examination;

(C) failure of the initial written and/or practical examination will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure will require that the candidate attend and satisfactorily complete the basic course of instruction for certification of a breath testing operator.

(3) Prior to certification an applicant must establish proof of participation in a breath testing program that meets the requirements set forth in §19.3 of this title (relating to Certification of Techniques, Methods, and Programs) and has been approved by the scientific director.

(4) Persons who have been convicted of a felony, theft, or a crime of moral turpitude shall not be eligible to become a certified operator.

(5) Upon successful completion of the requirements for initial certification, the scientific director will issue the individual an operator's certificate valid for a period of time designated by the scientific director or until the next examination for renewal unless inactivated, suspended, or revoked.

(b) Renewal of current certification. The operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) An annual demonstration by the operator of competence to perform satisfactory reference analyses as stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods, and Programs). The practical examination as stated in subsection (a)(2)(B) of this section will be conducted under the supervision of a technical supervisor. The operator will be evaluated on the basis of ability to:

(A) use proper techniques;

(B) obtain proper instrument results pursuant to §19.3(c) (4) of this title (relating to Certification of Techniques, Methods, and Programs); and

(C) follow established procedures including, but not limited to, the operation of the instrument and reference sample device and the proper reporting procedures for analysis results.

(2) the satisfactory biennial completion of a course of instruction at least four hours in duration, the contents of which should include, but not be limited to, topics such as:

(A) a brief review of the theory and operation of the breath alcohol test equipment;

(B) a detailed review of the breath alcohol analysis and reporting procedures;

(C) a discussion of procedural updates resulting from recent court decisions and legislation;

(D) a discussion of current problems in the field of breath alcohol testing;

(E) a written examination on the material presented in the renewal course and during the basic course of instruction.

(3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A) fails to follow established procedures;

(B) uses other than proper technique;

(C) fails the practical examination; or

(D) fails the written examination.

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. A subsequent failure will require that the candidate attend and satisfactorily complete the basic course of instruction for certification of a breath testing operator.

(5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator's certificate valid for a period of time designated by the scientific director or until next renewal unless inactivated, suspended, or revoked.

(c) Proficiency requirements.

(1) The scientific director or a designated representative or the operator's technical supervisor may at any time require an operator to demonstrate proficiency and ability to properly operate the breath alcohol testing instrument and reference sample device.

(2) It is the responsibility of the individual operator to maintain proficiency.

(3) Failure to pass a proficiency test as defined in §19.7(1) of this title (relating to Explanation of Terms and Actions) will result in the operator's certification being suspended for 30 days.

(d) Certification inactivation, suspension and revocation.

(1) Inactivation of certification will be utilized for administrative program control pursuant to §19.7(g) of this title (relating to Explanation of Terms and Actions).

(2) Suspension of certification shall be administered in accordance with §19.7(w) of this title (relating to Explanation of Terms and Actions). A technical supervisor may suspend the certification of any operator under the supervision of that technical supervisor and recommend further action to the scientific director for malfeasance or noncompliance with any provisions of these regulations or when in the technical supervisor's judgment the operator's performance is unreliable or the operator is incompetent.

(A) The technical supervisor shall immediately notify the scientific director in writing of any such suspension and furnish a copy of such notice to the suspended operator and the operator's appropriate supervisor or department head. The suspended operator shall not be permitted to operate the instrument until such time as certification has been restored pursuant to subsection (e) of this section.

(B) Upon receipt of the notification of suspension, the scientific director shall immediately initiate an inquiry culminating in sustaining the suspension, revoking certification, or setting aside the suspension.

(3) Revocation of certification shall be administered in accordance with §19.7(s) of this title (relating to Explanation of Terms and Actions). Certification shall be revoked by the scientific director pursuant to subsection (d)(2)(B) of this section when the operator intentionally or purposefully disregards or violates these regulations, commits a violation of law relating to breath testing, or falsely or deceitfully obtains certification. An operator whose certification has been revoked shall not be eligible for examination for certification again within 12 months of the date of revocation or such other time as determined by the scientific director.

(4) An operator whose certification has been suspended or revoked may appeal such action in writing to the director, Texas Department of Public Safety, who will determine if the action of the scientific director will be affirmed or set aside. The director may reinstate certification under such conditions as deemed necessary and notify the scientific director in writing.

(e) Recertification.

(1) Certification that has been inactivated, suspended, or revoked must be regained before evidential analyses can be administered. It will be the responsibility of the inactivated, suspended, or revoked operator to notify the scientific director in writing of such intent. This notification shall be submitted in close proximity to the completion of any mandatory waiting period imposed under certification cancellation. Recertification shall take place pursuant to the following:

(A) Recertification after voluntary inactivation (and the period of inactivation is less than six months) will be pursuant to subsection (a)(2)(B) of this section.

(B) Recertification after voluntary inactivation (and the period of inactivation is more than six months) or for failure to attend annual renewal will be pursuant to subsection (a)(2) of this section.

(C) Recertification after inactivation for failure of the renewal examination and/or examinations will be pursuant to subsection (b) of this section.

(D) Recertification after suspension or revocation will be in accordance with subsection (a)(2)(A) and (B) of this section.

(2) An operator who fails either examination required in paragraph (1)(A) through (D) of this subsection is guided by subsection (a)(2)(C) of this section for further examination.

(f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.

(g) Verification. The technical supervisor, when required, shall provide testimony in accordance with §19.7(y)(7) of this title (relating to Explanation of Terms and Actions) verifying all aspects of certification of operators within an assigned area.

§19.7. *Explanation of Terms and Actions.*

(a) Alcohol. As used in these regulations alcohol refers to ethyl alcohol (sometimes referred to as grain alcohol or ethanol).

(b) Breath alcohol test (breath alcohol analysis). Refers to the actual analysis of a specimen of the subject's breath to determine the alcohol concentrations thereof. Analyses must be performed by

certified individuals on certified instruments which are supervised by a certified technical supervisor in accordance with provisions stated in these regulations.

(c) Certification.

(1) Certification refers to meeting and maintaining the requirements set forth in these regulations. Under the provisions of these regulations, certification is granted to:

(A) operators;

(B) technical supervisors;

(C) breath alcohol test instruments;

(D) techniques, methods and programs (breath alcohol test programs, agencies); and

(E) courses of instruction.

(2) Certification is granted only by the scientific director when minimum requirements of certification have been met. All breath alcohol testing for evidential purposes must be performed under certification in order to be admissible for court purposes.

(3) Certificates are issued to operators, technical supervisors, breath alcohol test instruments, courses of instruction and breath alcohol test programs. Certificates are not issued for reference sample devices.

(d) Certified breath alcohol testing program (techniques and methods). Refers to any breath alcohol testing program meeting and maintaining the provisions stated in §19.3 of this title (relating to Certification of Techniques, Methods, and Programs). This certification is referred to as a total breath alcohol testing program, or total local program. Usually a total testing program refers to an agency or laboratory which meets the minimum requirements of having a certified breath alcohol testing instrument, approved reference sample device, certified technical supervisor, certified operators, and techniques, methods, and programs which have been inspected and certified by the scientific director. In order to obtain certification as a total program, the applying agency or laboratory should first contact the office of the scientific director to determine the criteria and regulations regarding certification. After original contact, the applying agency, laboratory, or school will be given an application with instructions setting forth the necessary requirements for certification. When all requirements for certification are met, including the acquisition of certified personnel, the scientific director will make an on-site inspection prior to the issuance of certification. Issuance of a certificate shall be evidence that the agency, laboratory, or school possesses certified instruments and approved reference sample devices.

(e) Certified course of instruction. Refers to any school, college, agency, institution, or laboratory which meets the requirements stated in §19.6 of this title (relating to Certification of Courses of Instructions) for certification of courses of training. Operator schools will be certified for instruction on specific instrument(s). Applications for school certification must be approved by the scientific director prior to the school's commencement. Certification of operators successfully completing a certified school can only be made by the office of the scientific director through the administration of appropriate examinations. The scientific director has the authority to limit enrollment of any school or deny individual enrollment if, in the opinion of the scientific director, such enrollment would not be in the best interest of the scientific integrity of the breath alcohol test program; for example, if enrollment in a certified operator school would



produce more operators than could be supervised by the number of available technical supervisors.

(f) **Certified operator.** Certified operator refers to an individual who has successfully completed the requirements stated in these regulations and has received certification from the scientific director to operate a specific instrument(s). Operator certification is contingent upon compliance with all provisions stated in §19.4 of this title (relating to Operator Certification).

(g) **Inactivation.**

(1) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, by the certified operator in case of voluntary surrender of certification, or by the technical supervisor in case of voluntary surrender of technical supervisor certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the scientific director. Recertification of an inactivated certificate will require a written request from the applicant to the scientific director and successful completion of the requirements outlined in §19.4(e) of this title (relating to Operator Certification) for recertification and/or other requirements determined by the scientific director. Inactivation will be used in, but not limited to, the following situations:

(A) an operator or technical supervisor transfers to a position where certification as a breath test operator or technical supervisor is no longer needed;

(B) an operator temporarily becomes physically incapable to perform tests for either medical or administrative reasons;

(C) an operator fails to renew current certification and reverts to an inactive status;

(D) an operator terminates employment under which certification was acquired and new employment does not require certification as an operator, or the new location of the operator cannot be ascertained; or

(E) a technical supervisor resigns from an approved or certified program, or is no longer supervising a certified program.

(2) Inactivation will not be considered by the office of the scientific director as a disciplinary action. It is for administrative program control to safeguard the scientific integrity of the breath alcohol test program.

(h) **Instruments.** Instruments are defined as the device(s) which measure or quantitate the breath alcohol concentration pursuant to §19.1 of this title (relating to Instrument Certification). Certification of instruments is only in conjunction with breath alcohol analysis for evidential purposes as stated in Texas Transportation Code, §724. Approval of breath alcohol test instruments will be made by brand and/or model by the scientific director.

(i) **Office of the scientific director.** Refers to the scientific director or his staff.

(j) **Practice test.** Practice test refers to a properly conducted reference analysis by the operator on a certified breath alcohol test instrument using an approved reference sample device. Analyses must be conducted in accordance with provisions stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods, and Programs).

(k) **Predicted value.** The predicted value refers to the known value of the reference sample. It is the result, within plus or minus 0.01g/210 Liters, which should be obtained in analyzing the reference sample.

(l) **Proficiency test.** A test administered by, and in the presence of, a technical supervisor to establish and/or ascertain the competency of an operator to obtain valid results on breath testing instrumentation.

(m) **Public information and demonstration.** Public information and demonstration refers to public demonstrations of certified evidential breath testing equipment. Certified evidential instruments should not ordinarily be used for public information programs and/or demonstrations. To utilize the equipment in this manner could violate the scientific integrity and validity of the analytical result in evidential subject analyses. When necessary, public information programs and demonstrations of certified equipment should only be performed by a certified technical supervisor.

(n) **Recertification.** Recertification refers to the renewal of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations, application for recertification requires a written request from the applicant to the scientific director. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful completion of requirements stated in §19.4(e) of this title (relating to Operator Certification) and/or additional requirements as stated by the scientific director.

(o) **Reference Sample Device (simulator).** A device that contains and delivers a temperature controlled headspace alcohol/water gas sample to a breath testing instrument, a device that artificially simulates the alveolar breath of a human being.

(p) **Renewal of current certification.** Renewal of current certification is referred to as certification renewal. Renewal of certification refers to the continuance of active certification by meeting the requirements stated in §19.4(b) of this title (relating to Operator Certification). Operator certificates have an expiration date and in order to be kept current require renewal. Failure or inability to renew current certification will result in inactivation or suspension. It is the responsibility of the certificate holder to renew certification. The scientific director, through the technical supervisor, will make available opportunities for certification renewal on a mass basis but cannot accept responsibility for individual renewal.

(q) **Reports and records.** Reports and records refer to all documents and reports required in breath alcohol testing. The scientific director, through the technical supervisor, supervises all reports and records of analyses conducted and/or documents relating to instruments and reference sample devices. Each specific brand and/or model of instrument requires specific records and forms which are explained in detail in the basic course of instruction for the specific instrument and which should be approved by the scientific director. Certification of a breath alcohol test program requires the completion and proper filing of certain documents relating to arrest. The scientific director, through the technical supervisor, is responsible to see that such documents are completed and filed but does not supervise these documents in regard to content. In addition to any forms, records, or documents required in the breath alcohol test program, the scientific director may require additional specific reports from the technical supervisors or other reports and records in regard to certifications and compliance with program regulations.

(r) Revisions. The changes which are adopted with the revision of these regulations apply only to breath tests that are done after the date of this revision. Previous revisions of these regulations are not nullified and nothing herein should be construed as limiting or canceling the effect of old regulations on tests done under these previous regulations.

(s) Revocation.

(1) Revocation is an action taken only by the scientific director. To regain certification after revocation requires a written request from the applicant to the office of the scientific director and successful completion of the requirements for certification and/or recertification and/or any additional requirements determined by the scientific director. Revocation invalidates any current program, course of instruction, instrument, operator, or technical supervisor certification issued to the revoked entity for the period of revocation and until recertification. Unless provided for by specific provision in these regulations revocation will apply in cases such as, but not limited to, the following:

(A) a certified instrument that is found to be unreliable, inaccurate, or unserviceable, and continued use of which, in the opinion of the scientific director, would not maintain the scientific integrity of the breath alcohol test program;

(B) a certified breath alcohol test program, or course of instruction which can no longer maintain the provisions of these regulations; or

(C) an operator or technical supervisor certificate not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the scientific director would not uphold the scientific integrity of the breath alcohol test program.

(2) Revocation will not be considered by the scientific director as a disciplinary action. Revocation will be for the purpose of enforcing these regulations and maintaining the scientific integrity of the breath alcohol test program.

(t) Scientific director. Denotes the title of the individual responsible for the implementation, administration, and enforcement of the Texas breath alcohol testing regulations. For the purpose of these regulations it shall also denote those as specified in §19.1(a) of this title (relating to Instrument Certification).

(u) Security. Refers to the safeguard of certified instruments at testing locations. Only certified operators, technical supervisors, and individuals defined in §19.3(c)(2) of this title (relating to Certification of Techniques, Methods, and Programs) shall have access to certified breath alcohol testing instruments. The technical supervisor has the responsibility and authority to maintain security at all times.

(v) Site location. Refers to the physical site where the breath alcohol testing instrument and reference sample device is located, and where testing is conducted pursuant to §19.3(b) of this title (relating to Certification of Techniques, Methods, and Programs). Relocation of certified breath alcohol test equipment requires the approval of the technical supervisor(s) and documentation of this fact. The technical supervisor has the authority to approve the site with regards to technical acceptability for breath alcohol testing and pursuant to subsection (u) of this section.

(w) Suspension. Suspension refers to the immediate cancellation of certification. A suspension can be initiated by the scientific director, technical supervisor, or designated representative of the scientific director. Prior to appeal to the director of the Department of

Public Safety, suspensions may be set aside or sustained only after investigation by the scientific director. The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director. Usually, suspensions will be immediate action taken by the suspending authority when there is reason to believe that unreliable or incompetent operations have occurred or there has been some violation of these regulations. Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in these regulations. A suspension invalidates any certification issued to the suspended entity for a period of suspension until recertification. To regain certification after the period of suspension requires a written request from the applicant to the scientific director. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the scientific director as a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the breath alcohol test program and upholding these regulations.

(x) System blank analysis (Sample Chamber Purge). An analysis of ambient air, free of alcohol and other interfering substances, that yields a result of 0.00.

(y) Technical supervisor and technical supervision. This term refers to an individual meeting the minimum requirements set forth in §19.5 of this title (relating to Technical Supervisor Certification) and certified by the scientific director. Technical supervisor certification, like operator certification, is limited to specific instrumentation. Technical supervisors have the responsibility and the authority to inactivate, suspend, or recommend revocation of any certification under their supervision. Inactivation, suspension, or recommended revocation by the technical supervisor will not be considered a disciplinary action, but a means to enforce these regulations and safeguard the scientific integrity of the breath alcohol testing program. Certification as a technical supervisor does not in itself imply disciplinary control or administrative in-line supervision over certified operators. However, technical supervisors must exercise complete technical supervisory authority over all operators in their assigned areas in all matters pertaining to breath alcohol testing and in enforcement of all provisions stated in these regulations. Certification of the technical supervisor and the program in which the technical supervisor operates is contingent upon the technical supervisor's ability to communicate directly with the office of the scientific director in accordance with the provisions stated in these regulations and by directives issued by the scientific director. The primary function of the technical supervisor is to provide the technical, administrative, and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to assure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records, and operator's compliance with the provisions stated in these regulations;

(2) supervision of data gathered for initial certification and/or approval of individual instruments and reference sample devices in an assigned area;

(3) supervision of techniques of testing, maintaining scientific integrity and upholding these regulations as they apply to the certification of a total testing program;

(4) selection and supervision of a testing location as it applies to security and technical suitability for testing;

(5) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(6) all technical, administrative, and regulatory aspects of breath alcohol testing within a designated area; and

(7) expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing within an assigned area.

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 15, 1998.

TRD-9811189

Dudley M. Thomas

Director

Texas Department of Public Safety

Effective date: August 4, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 424-2890



## Chapter 27. Crime Records

### Subchapter G. Texas Help End Auto Theft

#### 37 TAC §§27.81-27.89

The Texas Department of Public Safety adopts new §§27.81 - 27.89, concerning the Texas Help End Auto Theft (H.E.A.T.) Program, without changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6146).

The justification for the sections will be to deter auto theft.

The new sections are necessary for the implementation and maintenance of the Texas H.E.A.T. Program under the Automobile Theft Prevention Authority (Authority) established under the authority of Texas Civil Statutes, Article 4413(37). This act of the 72nd Texas Legislature intends to reduce auto theft in the State of Texas.

The new sections set forth procedures for a statewide automobile registration program to be administered by the Texas DPS. The goal of the Texas H.E.A.T. Program is to help reduce auto theft in the State of Texas. As such, this program will primarily be a deterrent to auto theft rather than an apprehension tool. The DPS under the direction of the Authority has developed a statewide vehicle registration program known as the Texas H.E.A.T. Program. Under the Texas H.E.A.T. Program, law enforcement officers are authorized to stop vehicles which are registered in the program when observed on public streets anywhere in Texas between the hours of 1:00 a.m. and 5:00 a.m., according to the registration signed voluntarily by the vehicle

owner, to determine whether the vehicle is being operated by the owner or with the owner's permission. Vehicle owners participating in this program may also voluntarily extend authority to peace officers to stop a registered vehicle that crosses or is about to cross an international border directly from the state of Texas.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(37), §9, and Texas Government Code, §411.006(4) which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department.

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 15, 1998.

TRD-9811190

Dudley M. Thomas

Director

Texas Department of Public Safety

Effective date: August 4, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 424-2890



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 6. Disaster Assistance Program

##### Subchapter B. Eligibility Criteria for Individual and Family Grants

#### 40 TAC §6.101

The Texas Department of Human Services (DHS) adopts an amendment to §6.101, concerning eligibility criteria, in its Chapter 6, Disaster Assistance Program. The purpose of the amendment is to comply with Federal Emergency Management Agency (FEMA) Response and Recovery Directorate No. 4430.140 C, Policy on Verification of Citizenship, Qualified Alien Status and Eligibility for Disaster Assistance. In July of 1995, the U.S. Congress passed a law directing FEMA to prohibit providing any funds to persons not lawfully present in the United States. FEMA interprets this to mean that it is required to check lawful presence in the United States before it can provide non-emergency assistance to an individual. This law impacts the FEMA Disaster Housing Program and, effective February 28, 1998, the Individual and Family Grant Program (IFGP).

The amendment will function by enabling the IFGP to comply with the intent of the July 1995 law passed by the U.S. Congress prohibiting the provision of federal funds to any person not lawfully present in the United States.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030.

The adopted amendment is adopted to be effective February 28, 1998, to comply with federal requirements.

*§6.101. Eligibility Criteria.*

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

(d) A victim must sign a declaration that attests to his being a United States citizen, a non-citizen national, or a qualified alien in the United States. The signor is also to provide FEMA or the state inspector with a form of identification to confirm his identity.

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-9811046

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: February 28, 1998

For further information, please call: (512) 438-3765



## Chapter 48. Community Care for Aged and Disabled

### Subchapter F. In-Home and Family Support Program

#### **40 TAC §48.2702, §48.2703**

The Texas Department of Human Services (DHS) adopts amendments to §48.2702 and §48.2703, without changes to the proposed text published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6154).

The justification for the amendment to §48.2702 is to delete the requirement that waiting list applicants be contacted annually and to begin the processing time for new applications from the date of the home visit rather than the date of assignment from the waiting list. The justification for the amendment to §47.2703 is to replace the copayment table with a detailed description of the method of copayment assessment.

The amendment to §48.2702 will function by providing the presumption of continued interest in the program for all waiting list applicants and to "start the clock" for application processing at the same time for all applicants, thereby allowing all the same amount of time to furnish eligibility information. The amendment to §48.2703 will function by ensuring stability of the rule regarding copayment assessment, rather than annual revision.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 35, which provides the department with the authority to administer public assistance and support services for persons with disabilities programs.

The amendments implement §§22.001-22.030 and 35.001-35.012 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 1998.

TRD-9811273

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 15, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 438-3765



## Part XVI. Council on Sex Offender

### Chapter 510. Sex Offender Treatment Provider Registry

#### **40 TAC §§510.1-510.9**

The Council on Sex Offender Treatment (council) adopts the repeal of §§510.1-510.9, concerning the sex offender treatment provider registry without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4549). Specifically, the sections cover definitions; registry criteria; registry renewal; fees; application availability; documentation of experience and training; revoke, refuse, or refuse to renew a registry listing; judicial review of exclusion from registry; and registry inclusion based on pre-existing status.

House Bill (HB) 2699, 75th Legislature, 1997, transferred the administration and enforcement required by the council (Texas Civil Statutes, Article 4413(51)), to the Texas Department of Health (department) effective September 1, 1997. Section 17 of this bill transferred all funds, property, records, and employees to the department as of September 1, 1997. The rules repealed in 40 Texas Administrative Code (TAC) Chapter 510 are adopted in 22 TAC Chapter 810, §§810.1-810.9. The rules are adopted in 22 TAC Chapter 810 in order to be regrouped with other boards administratively attached to the department and are renumbered under one chapter instead of four chapters.

No comments on the adopted repeal were received.

The repeal is adopted under the Act, Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act and §8 provides the council with the authority to adopt rules concerning the registration requirements and procedures for sex offender treatment providers on the registry.

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 20, 1998.

TRD-9811428

Collier M. Cole, Ph.D.

Chairperson

Council on sex Offender Treatment

Effective date: August 9, 1998  
Proposal publication date: May 8, 1998  
For further information, please call: (512) 458-7236



## Chapter 511. Criminal Background Check Security

### 40 TAC §§511.1-511.4

The Council on Sex Offender Treatment (council) adopts the repeal of §§511.1-511.4, concerning the criminal background check security without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4549). Specifically, the sections cover access to criminal history records; destruction of criminal history records; records of the council; and frequency of criminal background checks.

House Bill (HB) 2699, 75th Legislature, 1997, transferred the administration and enforcement required by the council (Texas Civil Statutes, Article 4413(51)), to the Texas Department of Health (department) effective September 1, 1997. Section 17 of this bill transferred all funds, property, records, and employees to the department as of September 1, 1997. The rules repealed in 40 Texas Administrative Code (TAC) Chapter 511 are adopted in 22 TAC Chapter 810, §§810.31-810.34. The rules are adopted in 22 TAC Chapter 810 in order to be regrouped with other boards administratively attached to the department and are renumbered under one chapter instead of four chapters.

No comments on the proposed repeal were received.

The repeal is adopted under the Act, Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act and §16(f) provides the council with the authority to adopt rules to collect and destroy information concerning criminal backgrounds.

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 20, 1998.

TRD-9811429  
Collier M. Cole, Ph.D.  
Chairperson  
Council on sex Offender Treatment  
Effective date: August 9, 1998  
Proposal publication date: May 8, 1998  
For further information, please call: (512) 458-7236



## Chapter 512. Standards of Practice

### 40 TAC §§512.1-512.3

The Council on Sex Offender Treatment (council) adopts the repeal of §§512.1-512.3, concerning the standards of practice without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4550). Specifically, the sections cover the purpose of the council; council's assertions; and issues to be addressed in treatment.

House Bill (HB) 2699, 75th Legislature, 1997, transferred the administration and enforcement required by the council (Texas

Civil Statutes, Article 4413(51)), to the Texas Department of Health (department) effective September 1, 1997. Section 17 of this bill transferred all funds, property, records, and employees to the department as of September 1, 1997. The rules repealed in 40 Texas Administrative Code (TAC) Chapter 512 are adopted in 22 TAC Chapter 810, §§810.61-810.63. The rules are adopted in 22 TAC Chapter 810 in order to be regrouped with other boards administratively attached to the department and are renumbered under one chapter instead of four chapters.

No comments on the proposed repeal were received.

The repeal is proposed under the Act, Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811430  
Collier M. Cole, Ph.D.  
Chairperson  
Council on Sex Offender Treatment  
Effective date: August 9, 1998  
Proposal publication date: May 8, 1998  
For further information, please call: (512) 458-7236



## Chapter 513. Code of Professional Ethics

### 40 TAC §§513.1-513.2

The Council on Sex Offender Treatment (council) adopts the repeal of §§513.1-513.2, concerning the professional code of ethics without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4551). Specifically, the sections require that the providers will establish and maintain the highest level of professional standards related to the assessment and treatment of sex offenders.

House Bill (HB) 2699, 75th Legislature, 1997, transferred the administration and enforcement required by the council (Texas Civil Statutes, Article 4413(51)), to the Texas Department of Health (department) effective September 1, 1997. Section 17 of this bill transferred all funds, property, records, and employees to the department as of September 1, 1997. The rules repealed in 40 Texas Administrative Code (TAC) Chapter 513 are adopted in 22 TAC Chapter 810, §§810.91-810.92. The rules are adopted in 22 TAC Chapter 810 in order to be regrouped with other boards administratively attached to the department and are renumbered under one chapter instead of four chapters.

No comments on the proposed repeal were received.

The repeal is adopted under the Act, Texas Civil Statutes, Article 4413(51). Section 2(b) provides the council with the authority to adopt rules consistent with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811431  
Collier M. Cole, Ph.D.

Chairperson  
Council on Sex Offender Treatment  
Effective date: August 9, 1998  
Proposal publication date: May 8, 1998  
For further information, please call: (512) 458-7236



## Part XX. Texas Workforce Commission

### Chapter 800. General Administration

#### Subchapter B. Allocation and Funding

##### **40 TAC §800.51**

The Texas Workforce Commission (Commission) adopts an amendment to §800.51, concerning the allocation of funds to local workforce development areas without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5390). The adopted text will not be republished here.

The purpose of the amendment is to allow the Commission to locate other allocation and funding rules within Subchapter B that relate to allocations to various entities.

No comments were received on the proposed amendment.

The amendment is adopted under the authority of the Texas Labor Code, §§301.001 and 302.062, which provides the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

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 20, 1998.

TRD-9811361

J. Randel Hill

General Counsel

Texas Workforce Commission

Effective date: August 9, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 463-8812



# TEXAS DEPARTMENT OF INSURANCE

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## **Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L**

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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## PROPOSED ACTIONS

The Commissioner of Insurance, at a public hearing under Docket No. 2374 scheduled for September 23, 1998 at 9:00 a.m., in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1995, 1997, 1998, and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0798-18-I), was filed on July 9, 1998.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1995, 1997, 1998, and 1999 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0798-18-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9811578

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: July 22, 1998

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The Commissioner of Insurance, at a public hearing under Docket No. 2376 scheduled for September 23, 1998 at 9:00 a.m., in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a Staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rules 55, 71, 72, 74, and 75 concerning eligibility of certain individuals for personal auto coverage and the Texas Driving Insurance Plan. Staff's petition (Ref. No. A-0798-20-I), was filed on July 22, 1998.

The most extensive changes that Staff recommends are to Manual Rule 72 (Personal Auto Policy and Coverage—Eligibility). These amendments expand the list of persons eligible for personal auto coverage. Instead of the current requirement that a jointly owned auto be owned by a husband and wife, Staff's proposal would allow personal auto coverage for an auto jointly owned by two or more individuals who are residents of the same household (proposed Rules 71, 72, and 74). Additionally, under Staff's proposed Rule 72, new Section E, personal auto coverage may be written for joint named insureds who are related by blood, marriage or adoption, and who are not residents of the same household, even if they do not jointly own the auto if: 1. the auto is owned by one or more of the joint named insureds who are residents of the household address shown in the policy, and 2. the joint named insured who is a resident of a different household is the primary operator of the auto.

Under Staff's proposal for Rule 72.A., certain types of vehicles may be afforded personal auto coverage if they meet the current requirement of being written on a specified auto basis, plus the new standard of being owned jointly by two or more individuals (not necessarily husband and wife) who are residents of the same household. A similar change is proposed for miscellaneous type vehicles under Rule 72.B.

Staff proposes amending Rule 71 (Definitions) regarding the definition of a utility type vehicle to be considered a private passenger auto. New wording for Rule 71.2.a. is proposed as follows: "a. owned or leased under written contract for a continuous period of at least six months: (1) by one or more individuals who are residents of the same household, or (2) by one or more individuals who are not residents of the same household, but are related by blood, marriage or adoption, including a ward or foster child; and...."

In Rule 74 (Private Passenger Auto Classifications) Staff would amend Section A (Private passenger autos) by replacing the first two phrases with the following language: "owned by an individual or



jointly by two or more individuals who are residents of the same household; or owned jointly by two or more individuals who are not residents of the same household address shown in the policy, but are related by blood, marriage or adoption, including a ward or foster child;...."

Staff would also eliminate the following wording under Section A.5. (which language would no longer be accurate): "\*Not eligible for coverage under a Personal Auto Policy."

Staff asserts that if Rules 71, 72, and 74 are amended, then Rule 55 (Eligibility) and Rule 75 (Texas Driving Insurance Plan) will also need to be amended in order for their eligibility provisions to be compatible with those first three rules. Therefore, Staff proposes to amend Rule 55.D.1. and E.1., and Rule 75.B.2. by deleting "owned by an individual or husband and wife who are residents of the same household...." Staff would replace the Rule 55 wording with the following: "described in Rule 71...." and the Rule 75 wording with the following: "described in Rules 71, 72, and 74...."

The Manual currently allows certain types of vehicles to be insured by a Personal Auto Policy if the vehicles are owned by an individual, or by a husband and wife who reside in the same household. Otherwise, the vehicles cannot be insured except through multiple policies or by some other policy form, such as the Business Auto Coverage Form. Commercial policies do not provide coverage as broad as the Personal Auto Policy, so Staff has said it appears inappropriate to require them for persons not using their private passenger autos in a commercial enterprise. Furthermore, Staff's petition asserts it could work a financial hardship in some cases to require certain individuals to purchase separate Personal Auto Policies merely because they cannot meet the Manual's current requirements for one such policy. The Manual's requirements are said to be somewhat outdated because of changes in modern life and relationships.

In closing, Staff's petition asserts its proposals would make it easier for individuals to qualify for a single Personal Auto Policy. Staff believes greater fairness will result from such changes.

A copy of the petition, including exhibits with the full text of the proposed amendments to the Manual, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0798-20-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9811579

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: July 22, 1998



The Commissioner of Insurance, at a public hearing under Docket No. 2377 scheduled for September 23, 1998 at 9:00 a.m., in Room 102

of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a Staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Endorsement 523B, Rental Reimbursement Coverage. Staff's petition (Ref. No. A-0798-21-I), was filed on July 22, 1998.

Staff proposes to amend the Manual's Personal Auto Policy Endorsement 523B (to be redesignated 523C), Rental Reimbursement Coverage, to remove the provision that excludes coverage when there is a total theft of the auto. Staff would substitute new language as follows: "When there is a total theft of the auto, the limit of \$20 per day (maximum of \$600) required under Coverage For Damage To Your Auto will be supplemented to the extent the limits in the above Schedule exceed that \$20 per day limit."

Since August 1, 1996, insureds under the Personal Auto Policy have had the option of purchasing variable limits of rental reimbursement coverage, up to \$35 per day (maximum of \$1050) through attachment of Endorsement 523B. However, that endorsement does not apply to total theft of the auto, which is covered up to \$20 per day (maximum of \$600) by the policy's Part D - Coverage For Damage To Your Auto.

Staff recommends deleting the language from Endorsement 523B that excludes coverage for total theft of the auto, and replacing that language with a provision that the total theft \$20 per day limit under the policy will be supplemented to the extent the limits shown in the endorsement's Schedule exceed that \$20 per day limit. Staff asserts that such an amendment appears to give a more logical result than the current endorsement's language, because an insured who wants \$35 per day coverage will need it just as much for a total theft loss as for any other loss that puts the auto out of service.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0798-21-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9811580

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: July 22, 1998



# == REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

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## Proposed Rule Reviews

Texas Credit Union Department

### Title 7 Part VI

The Credit Union Commission will review and consider for readoption sections of Chapter 97, General Provisions and Fees, of Title 7, Part VI of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167. Specifically, the following sections of Chapter 97 shall be reviewed: §97.101 Meetings; §97.102 Delegation of Duties; §97.105 Frequency of Examination; and §97.114 Charges for Public Records.

As required by §167, the Credit Union Commission will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 45 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted in writing to Lynette Pool-Harris, Deputy Commissioner, Credit Union Department, 914 E. Anderson Lane, Austin, Texas 78752-1699; or electronically to [deputy.commissioner@tcud.state.tx.us](mailto:deputy.commissioner@tcud.state.tx.us).

TRD-9811479

Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: July 21, 1998



Public Utility Commission of Texas

### Title 16 Part II

The Public Utility Commission of Texas files this notice of intention to review §23.96 relating to Telephone Directories pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167). Project Number 19431 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.96 and is proposing new §26.128 relating to Telephone Directories 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 §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 §23.96. Telephone Directories.

TRD-9811389  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



## Adopted Rule Review

Texas Education Agency

### Title 19 Part II

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter C, Adoptions by Reference, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3883). The TEA finds that the reason for adopting 19 TAC Chapter 109, Subchapter C, continues to exist.

The TEA received no comments related to the rule review requirement as to whether the reason for adopting the rule continues to exist. As part of this review process, the TEA adopts an amendment to 19 TAC §109.41. The adopted amendment may be found in the Adopted Rules section in this issue.

TRD-9811415  
Criss Cloudt  
Associate Commissioner, Policy Planning and Research  
Texas Education Agency  
Filed: July 20, 1998



# TABLES & GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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Docket No. \_\_\_\_\_

IN THE MATTER OF

§

BEFORE THE OFFICE

§

OF THE

§

ATTORNEY GENERAL

\_\_\_\_\_

**REQUEST FOR HEARING**

**This request for hearing form should be completely filled out by you or your lawyer if you wish to have a hearing to contest the distribution of your child support payments. If you request a hearing you will be notified of the date and time your hearing has been scheduled.**

1. My name, address, telephone number and Social Security number, which I have listed below, are true and correct. I understand that if there are any changes I must immediately notify the Coordinator for the Office of the Administrative Law Judge. I understand that my failure to supply those changes to the Coordinator may result in my failing to receive notices or other pleadings and documents.

2. I am contesting the Agency's distribution/retention of the child support payments collected in my case for the following reasons: (use additional sheets as necessary and attach supporting evidence)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I understand that:

- a. a decision will be made by the agency after a hearing is held based on the testimony and evidence at the hearing;
- b. I will receive written notice of the decision and the reasons for the decision; and
- c. The Office of the Attorney General cannot represent me or give me legal advice; I have the right to hire my own lawyer to represent me at the hearing.

[IF YOU ARE REPRESENTED BY A LAWYER, PLEASE FILL IN THE INFORMATION BELOW. ALL NOTICES AND LETTERS WILL BE SENT TO YOUR LAWYER.]

\_\_\_\_\_  
Lawyer's Name

\_\_\_\_\_  
Lawyer's Address

\_\_\_\_\_  
Lawyer's Phone Number

4. Please read and check one of the following choices for your hearing:

**IN PERSON** - I will be present for the in-person hearing set in this case. I understand that the hearing will be held at the Office of the Attorney General, 5500 E. Oltorf, Austin, Texas, unless a different address is stated in the Notice of Hearing. The Coordinator will send the Notice of Hearing to the address I listed below when the hearing date is set.

**OR**

**TELEPHONIC** - I request that the hearing on the proposed intercept of my child support payments be conducted by telephone. I will be at the following telephone number for the telephone hearing: ( ) \_\_\_\_\_. I understand that if I am at a different phone number on the date of the hearing, it is my responsibility to notify the Coordinator of the number where I may be reached. I understand that my request for hearing may be dismissed if I am not available for the telephonic hearing at the telephone number I have designated when the Administrative Law Judge calls.

6. I am sending the original of this Request for Hearing to the Coordinator for filing and a copy, including any documents I have provided, to the party or their attorney who signed the Petition.

MY SIGNATURE BELOW IS THE ACKNOWLEDGMENT THAT I HAVE READ THIS REQUEST FOR HEARING AND THAT ALL THE RESPONSES ARE TRUE AND CORRECT.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Home Phone Number

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Daytime Phone Number

[This request for hearing must be returned to and filed with:  
Coordinator, Office of the Administrative Law Judge  
Child Support Division  
Office of the Attorney General  
P.O. Box 12017, Mail Code 039-3  
Austin, Texas 73711-2017 (Postal Service delivery)]  
or  
5500 E. Oltorf  
Austin, Texas 78741 (hand delivery)

Telephone # (512) 460-6046

**NOTICIA IMPORTANTE:**

Este es un documento importante que les avisan de sus derechos legales relacionados sobre la distribución de su pagos de soporte de niños. Si no habla inglés es importante que contacte alguien que le interprete este documento.

(This is an important document which advises you of your legal rights related to the distribution of your child support payments. If you do not speak English it is important that you contact someone who can interpret this document. )

# STATE OF TEXAS NEW HIRE REPORTING FORM

Figure ITAC § 55.303(c)(1)(B)

TO ENSURE ACCURACY, PLEASE PRINT (or TYPE) NEATLY IN UPPER-CASE LETTERS AND NUMBERS, USING A DARK, BALL-POINT PEN

Employer Federal EIN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Texas State EIN: \_\_\_\_\_ (Optional)

**EMPLOYER INFORMATION:**

Employer Name: \_\_\_\_\_ (name, d/b/a, etc.)

Employer Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ + 4 (Opt.)

Country (Optional for foreign address) \_\_\_\_\_ Country Code (Mandatory for foreign address) \_\_\_\_\_

Foreign Country Zip Code (Optional for foreign address) \_\_\_\_\_

**EMPLOYEE INFORMATION:**

Social Security Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

First Name \_\_\_\_\_ Middle Name(Opt.) \_\_\_\_\_

Name: \_\_\_\_\_ Last Name \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ + 4 (Opt.)

Country (Optional for foreign address) \_\_\_\_\_ Country Code (Mandatory for foreign address) \_\_\_\_\_

Foreign Country Zip Code (Optional for foreign address) \_\_\_\_\_

FIELDS BELOW ARE ADDITIONAL OPTIONAL ITEMS:

Date of Birth: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Date of Hire: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ State of Hire: \_\_\_\_\_  
M M D D Y E A R M M D D Y E A R

Salary: \$ \_\_\_\_\_ / \_\_\_\_\_  
H = hourly Q = quarterly M = monthly  
A = annually S = semi-monthly B = bi-weekly  
W = weekly T = semi-annually O = one-time



Figure 1 TAC § 55.303(c)(3) -- page 1

**ELECTRONIC REPORTING SPECIFICATIONS**

This attachment presents the submission requirements for those employers who wish to report new hires electronically. Employers who have any questions about reporting electronically should contact Technical Support Staff at New Hire Operations Center at (888) TEXHIRE.

**3½" Diskette:** The diskettes must conform to the format specifications for Data Record Layout below. The diskettes must be non-compressed and in ASCII fixed field length format. Do not enclose fields in quotes or use comma delimiters. An external label must be affixed to the diskette indicating the employer's name, federal EIN number, contact name, and phone is required.

**Magnetic Tapes:** The tape must conform to specifications for Header and Data Record Layouts below. Magnetic tapes must be 9 track, 1600 or 6250 bpi, non-labeled, EBCDIC. Block size must be 8010. Tapes must contain one header record per physical file. An external label indicating the employer's name, address, contact name, and phone is required.

**Cartridge Tape:** The cartridge tape (IBM 3480, 3490 - NOTE: Cannot process 3490/E) must conform to specifications for Header and Data Record Layouts below. Cartridge tapes must be non-labeled, EBCDIC. Block size must be 8010. Tapes must contain one header record per physical file. An external label indicating the employer's name, address, contact name, and phone is required.

**Note:** All fields are in upper case alphanumeric format - left justified with trailing spaces and no special characters, except where specified. Missing non-required fields should contain all spaces.

Field Name	Type	Length	St Position	End Position	Optional/Required	Format/Default Values
Record Identifier*	Character	2	1	2	Required	=T4
Data Record Count*	Numeric	11	3	13	Required	Excludes Header Record
Filler*	Character	788	14	801	Required	Fill with spaces

Logical Record Length = 801

Field Name	Type	Length	St Position	End Position	Optional/Required	Format/Default Values
Record Type*	Character	2	1	2	Required	=W4
Employee Social Security Number	Numeric	9	3	11	Required	As reported by employee
Employee's First Name*	Character	16	12	27	Required	
Employee's Middle Name	Character	16	28	43	Optional	
Employee's Last Name*	Character	30	44	73	Required	
Employee's Address - Line 1*	Character	40	74	113	Required	
Employee's Address - Line 2	Character	40	114	153	Optional	
Employee's Address - Line 3	Character	40	154	193	Optional	
Employee's City*	Character	25	194	218	Required	
Employee's State*	Character	2	219	220	Required	Valid 2 letter state code (e.g. Texas = TX)
Employee's Zip Code*	Character	5	221	225	Required	All zeros will be rejected
Employee's Zip Code +4	Character	4	226	229	Optional	
Employee's Address: Foreign Country Code	Character	2	230	231	Optional	Mandatory for Foreign Address
Employee's Address: Foreign Country Name	Character	25	232	256	Optional	
Employee's Address: Foreign Zip Code	Character	15	257	271	Optional	
Employee's Date of Birth	Character	8	272	279	Optional	CCYYMMDD
Employee's Date of Hire	Character	8	280	287	Optional	CCYYMMDD, Default = Date File Created
Employee's State of Hire	Character	2	288	289	Optional	
Employer's Federal EIN*	Numeric	9	290	298	Required	All zeros will be rejected
Employer's State EIN	Character	12	299	310	Optional	
Employer's Name*	Character	45	311	355	Required	

Logical Record Length = 801

Figure 1 TAC § 55.303(c)(3) -- page 2

Employer's Street Address - Line 1*	Character	40	356	395	Required
Employer's Street Address - Line 2	Character	40	396	435	Optional
Employer's Street Address - Line 3	Character	40	436	475	Optional
Employer's City*	Character	25	476	500	Required
Employer's State*	Character	2	501	502	Required
Employer's Zip Code*	Numeric	5	503	507	Required
Employer's Zip Code +4	Character	4	508	511	Optional
Employer's Add.: Foreign Country Code	Character	2	512	513	Optional
Employer's Add.: Foreign Country Name	Character	25	514	538	Optional
Employer's Add.: Foreign Country Zip Code	Character	15	539	553	Optional
Employer's Optional Address - Line 1	Character	40	554	593	Optional
Employer's Optional Address - Line 2	Character	40	594	633	Optional
Employer's Optional Address - Line 3	Character	40	634	673	Optional
Employer's Optional Address: City	Character	25	674	698	Optional
Employer's Optional Address: State	Character	2	699	700	Optional
Employer's Optional Address: Zip Code 1	Character	5	701	705	Optional
Employer's Optional Address: Zip Code 2	Character	4	706	709	Optional
Employer's Optional Add.: For Country Code	Character	2	710	711	Optional
Employer's Optional Add.: For Country Name	Character	25	712	736	Optional
Employer's Optional Add.: Zip Code	Character	15	737	751	Optional
Filler*	Character	10	752	761	Required
Salary	Numeric	9	762	770	Optional
Frequency	Character	1	771	771	Optional
Filler*	Character	30	772	801	Required

\*\*\*\*Field Names in bold denote required fields

Decimal point is implied

... Frequency Codes are as follows: H = hourly Q = quarterly M = monthly

A = annually S = semi-monthly B = bi-weekly

W = weekly T = semi-annually O = one-time

Valid 2 letter state code (e.g. Texas = TX)  
All zeros will be rejected  
Mandatory for Foreign Address  
Fill with spaces  
\*7.2 format, right justified, left filled with zeros  
\*\* See frequency codes below  
Fill with spaces



# TEXAS OPTOMETRY BOARD

Figure: 22 TAC 277.1(a)

333 GUADALUPE STREET, SUITE 2-420  
AUSTIN, TX 78701-4392  
512/305-8500

## CONSUMER COMPLAINT FORM

1. Information about optometrist or person(s) being reported:

NAME \_\_\_\_\_ LICENSE NUMBER \_\_\_\_\_

OFFICE LOCATION \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ TELEPHONE NUMBER \_\_\_\_\_

2. Complainant information:

NAME \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ TELEPHONE NUMBER \_\_\_\_\_

3. Incident being reported. Clearly indicate the nature of your complaint. If more space is needed, attach additional sheet(s). Enclose photocopies of supporting documentation available (records, prescriptions, advertising, etc).

DATE(S) \_\_\_\_\_

INCIDENT \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RESULTS: Explain briefly what your desired results would be, providing such is within the jurisdiction of the Texas Optometry Act.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The above statement is true and accurate to the best of my knowledge.

\_\_\_\_\_

Signature of Complainant

\_\_\_\_\_

Date

Figure: 25 TAC §157.131(u)

## TRAUMA STABILIZATION (LEVEL V) FACILITY CRITERIA

Department-approved written affiliation agreement with appropriate tertiary trauma facility	E
Participation on RAC, to include compliance with regional patient destination protocols and the system performance improvement (PI) program	E
Medical director; job description shall outline responsibility for the facility's trauma program to include PI activities	E
Appropriate resuscitation protocol, including roles and responsibilities	E
Appropriate transfer protocol and written transfer agreements	E
Staffing is 24 hours/day by two health care professionals, including at least a family nurse practitioner or a physician's assistant and a registered nurse or paramedic.	E
Staffing includes a licensed physician	D
Health care professionals must have completed the following courses, or department-approved equivalents, at the time of designation: Nurse Practitioner/Physician's Assistant: ACLS, ATLS, and Pediatric Advanced Life Support (PALS) or Emergency Nurse Pediatric Course (ENPC); Registered Nurse: ACLS, TNCC, and PALS or ENPC; Paramedic: ACLS, Basic Trauma Life Support (BTLS) or Prehospital Trauma Life Support (PHTLS), and PALS or Prehospital Pediatric Provider Course (PPPC); Physician: ACLS, ATLS, and PALS	E
Two-way communication with prehospital EMS	E
Instantaneous communication with a tertiary trauma facility	E
Digitized video system for direct contact with a trauma surgeon at a tertiary trauma facility	D
Appropriate resuscitation equipment for all ages, to include rapid infusion and warming devices	E
Immediate access to standard lab analyses	E
Capability to give uncrossmatched blood	E
X-ray capability	E
Teleradiology capability	D
Capability to establish an appropriate landing zone in close proximity to the facility	E
Physical transport of patients to be initiated within 30 minutes of patient arrival	E
Trauma patient data to be reported to state trauma registry on a quarterly basis	E
Trauma PI program in conjunction with a tertiary trauma facility	E

E - Essential    D - Desired

Figure: 25 TAC §289.230(b)(31)

$$OD = \log_{10} \frac{I_0}{I_t}$$

where  $I_0$  = light intensity incident on the film and  
 $I_t$  = light transmitted through the film.

Figure: 25 TAC §289.230(e)(1)(G)

The coefficient of variation of exposure shall not exceed 0.10 when all technique factors are held constant. This requirement shall be deemed to have been met if, when four exposures are made at identical technique factors, the value of the average exposure ( $\bar{E}$ ) is greater than or equal to five times the maximum exposure ( $E_{max}$ ) minus the minimum exposure ( $E_{min}$ ). In addition, mammographic systems in the AEC mode shall be able to maintain constant film density to within plus or minus 0.3 OD of the average OD over the range of kVp used in clinical conditions.

$$\bar{E} \geq 5 (E_{max} - E_{min})$$

Figure: 25 TAC §289.230(e)(1)(N)(i)

The coefficient of variation of exposure shall not exceed 0.10 when all technique factors are held constant. This requirement shall be deemed to have been met if, when four exposures are made at identical technique factors, the value of the average exposure ( $\bar{E}$ ) is greater than or equal to five times the maximum exposure ( $E_{\max}$ ) minus the minimum exposure ( $E_{\min}$ ):

$$\bar{E} \geq 5 (E_{\max} - E_{\min})$$

Figure: 25 TAC §289.230(e)(1)(N)(ii)

The average ratios of exposure (mR) to the indicated mAs product obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum, where  $\bar{X}_1$  and  $\bar{X}_2$  are the average mR/mAs values obtained at each of two consecutive tube current settings:

$$|\bar{X}_1 - \bar{X}_2| \leq 0.10 (\bar{X}_1 + \bar{X}_2)$$



Figure: 25 TAC §289.230(z)(2)

<u>Specific Subsection</u>	<u>Name of Record</u>	<u>Time Interval for Record Keeping</u>
(d)(1)(A)	Quality Assurance Program	2 years
(d)(1)(B)(i) through (xvi), and (C)	Quality Control Checks	2 years
(d)(1)(B)(i) and (iv)	Films Resulting from Performance of Quality Control Tests	1 year
(d)(1)(D)	Retention of Clinical Images	In accordance with subsection (d)(1)(D) of this section
(d)(2)(A)	Interpreting Physician Qualifications	Until termination of certification or 2 years after physician leaves facility
(d)(2)(A)(iv)(I)	Interpreting Physician Continuing Experience	2 years
(d)(2)(A)(iv)(II)	Interpreting Physician Continuing Education	6 years
(d)(2)(B)(i)	Medical Radiologic Technologist Qualifications	Until termination of certification or 2 years after technologist leaves facility
(d)(2)(B)(ii)	Medical Radiologic Technologist Continuing Education	6 years
(d)(3)(C)	Physicist Mammography Survey	7 years
(d)(10)	Records of Receipts, Transfer, and Disposal	Until termination of certification
(d)(15)	Records of Calibrations, Maintenance, and Modifications Performed on Mammographic Machines	2 years
(o)(5)	Certification of Inspection	Until termination of certification
(o)(6)	Notice of Failure	Until termination of certification
(o)(10)	Patient Notification	Until termination of certification



# OPEN MEETINGS

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Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

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**Texas State Board of Public Accountancy**

Wednesday, July 22, 1998, 8:30 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

By Telephone Conference Subcommittee of the Major Care Committee

**EMERGENCY MEETING AGENDA:**

Consultation with Counsel to discuss pending litigation (Executive session)

Reason for emergency: This meeting is scheduled under sections 551.045 and 551.125, Texas Government Code, (Vernon’s 1998) for the Board to consultant promptly with counsel in order to respond to developing events in active litigation. It is difficult or impossible for all subcommittee members to be present in one place because of previous business commitments.

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701–3900, 512/305–7848.

Filed: July 20, 1998, 4:07 p.m.

TRD-9811450



**Texas State Board of Acupuncture Examiners**

Friday, July 24, 1998, 10:00 a.m.

333 Guadalupe Tower 3 , Suite 610

Austin

Discipline/Ethics Committee

**AGENDA:**

1. call to order
2. roll call
3. executive session to review selected files and cases recommended for dismissal by Informal Settlement Conferences/Show Compliance Proceedings or staff review.
4. Adjourn

Executive Session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, as related to Article 4495b, Sections 2.07(b), 4.05(e), 5.06(s)(1), 6.04(g), and Op. A.G. 1974, No. H-484.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768–2018, 512/305–7016.

Filed: July 15, 1998, 3:10 p.m.

TRD-9811167



Friday, July 24, 1998, 10:00 a.m.

333 Guadalupe Tower 2 , Suite 225

Austin  
Licensure Committee

AGENDA:

1. call to order
2. roll call
3. executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.
4. Open session to review applicants for licensure
5. Discussion regarding the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) new certification policies
6. Adjourn

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, 512/305-7016.

Filed: July 15, 1998, 3:09 p.m.

TRD-9811166



Friday, July 24, 1998, 10:00 a.m.

333 Guadalupe Tower 2 , Suite 225

Austin  
Education Committee

AGENDA:

1. call to order
2. roll call
3. discussion, recommendation, and possible action regarding tutorial programs
4. discussion, recommendation, and possible action regarding criteria for unapproved acupuncture schools to be approved
5. Adjourn

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, 512/305-7016.

Filed: July 15, 1998, 3:10 p.m.

TRD-9811168



Friday, July 24, 1998, 10:45 a.m.

333 Guadalupe Tower 2 , Suite 225

Austin  
Ad Hoc Committee to Study Students Enrolled in Unapproved Schools and Unlicensed Acupuncturists Teaching in Schools

AGENDA:

1. call to order
2. roll call
3. discussion, recommendation, and possible action regarding students enrolled in unapproved schools
4. adjourn

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, 512/305-7016.

Filed: July 15, 1998, 3:10 p.m.

TRD-9811169



Friday, July 24, 1998, 1:00 p.m.

333 Guadalupe Tower 2 , Suite 225

Austin

AGENDA:

1. call to order
2. roll call
3. executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.
4. proposals for decision
5. consideration and approval of agreed board orders
6. public hearing and consideration of the cancellation of licenses for nonpayment and by request
7. discussion, recommendation, and possible action regarding Texas Acupuncture Association concerns.
8. Citizen Communication: a maximum of 10 speakers will be allowed to speak to the Board for up to 3 minutes each, on a "first-come, first-served" basis regarding acupuncture concerns.
9. approval of minutes for the April 20, 1998, Board Meeting and Committees.
  - a. Licensure Committee Meeting Minutes
  - b. Discipline/Ethics Committee Meeting Minutes
  - c. Education Committee Meeting Minutes
  - d. Ad Hoc Committee to Study Students Enrolled in Unapproved Schools Meeting Minutes
  - e. Full Board Meeting
10. Presentation of report from the July 24, 1998 Licensure Committee and consideration of possible approval of action items.
11. Presentation of report from the July 24, 1998 Discipline/Ethics Committee and consideration of possible approval of action items.
12. Presentation of report from the July 24, 1998 Education Committee and consideration of possible approval of action items.
13. Presentation of report from the July 24, 1998 Ad Hoc Committee to Study Students Enrolled in Unapproved Schools and Unlicensed Acupuncturists Teaching in Schools and consideration of possible approval of action items.
14. Adjourn

executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, 512/305-7016.

Filed: July 15, 1998, 3:10 p.m.

TRD-9811170



## State Office of Administrative Hearings

Monday, July 27, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-1299- Petition of Southwestern Public Service Company for: (1) Reconciliation of its Fuel and Purchased Power Costs for 1995-1997; (2) Findings of Special Circumstances; and (3) Related Relief (PUC Docket No. 19512).

Contact: William G. Newchurch, 300 North 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: July 17, 1998, 3:18 p.m.

TRD-9811318



Tuesday, July 28, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-1308- Complaint of Integretel, Inc. against GTE Telephone Operation (PUC Docket No. 19370).

Contact: William G. Newchurch, 300 North 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: July 16, 1998, 9:23 a.m.

TRD-9811209



Tuesday, July 28, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-1334- PUC Docket No. 16006; Petition of Lufkin-Conroe Telephone Exchange, Inc. for authority to recover lost revenues and costs of implementing expended local calling service pursuant to PUC Substantive Rule 23.49(c)(12).

Contact: William G. Newchurch, 300 North 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: July 15, 1998, 3:30 p.m.

TRD-9811172



Tuesday, October 20, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-0756-Application of Sugarland Telephone Company of Texas, Inc., for recover lost revenues and cost implementing expanded local calling service pursuant to PUC Substantive Rule 23.49(c)(12) (PUC Docket No. 18978).

Contact: William G. Newchurch, 300 North 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: July 22, 1998, 9:29 a.m.

TRD-9811556



## Texas Department on Aging

Tuesday, August 11, 1998, 1:00 p.m.

4900 North Lamar Boulevard, Brown-Heatley Building, Room 5501

Austin

Citizens Advisory Council

AGENDA:

Call to order, minutes of May 12, 1998 meeting. Receive public testimony. Discussion of Sunset Advisory Commission Report, Review and Comment on Legislative Appropriations Request. Critique of agency publications and consumer information needs; suggestions on improving. Critique of agency advocacy activities; suggestions on improving. Provide feedback on proposed outcomes for Ombudsman program. Evaluation of performance of CAC. Announcements. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/440-6840.

Filed: July 22, 1998, 11:42 a.m.

TRD-9811581



Wednesday, August 12, 1998, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatley Building, Room 5501

Austin

Area Agency on Aging Operations Committee

AGENDA:

Call to order; minutes of May 13, 1998 meeting, publish administrative rule for final adoption: 260 AAA Administrative Requirements .1(g)(7) Area Agency on Aging Accountability

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/440-6840.

Filed: July 22, 1998, 11:43 a.m.

TRD-9811582



Wednesday, August 12, 1998, 2:00 p.m.

4900 North Lamar Boulevard, Brown-Heatley Building, Room 5501

Austin

Audit and Finance Committee

AGENDA:

Consider and possibly act on: Call to order, minutes of May 13, 1998 meeting. Budget report; Fiscal Year (FY) 1999 Operating Budget/Agency Adoption Plan; FY 1999 Health Care Financing

Administration (HCFA) funding distribution; Recommendation to distribute supplemental FY 1998 HCFA funds; Carryover funds allowance for purchase of AIM system; FY 1999 Internal Audit Plan; Internal Audit of the TDoA Agency on Aging (AAA) Monitoring; Internal audit of the TDoA Contract Management System; Request for proposal status update; Audit updates-internal and State Auditor; Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/440-6840.  
Filed: July 22, 1998, 11:43 a.m.

TRD-9811583

◆ ◆ ◆  
Tuesday, August 13, 1998, 9:30 a.m.

4900 North Lamar Boulevard, Room 1410

Austin

Board on Aging

AGENDA:

Consider and possibly act on: Call to order, minutes of May 14, 1998 meeting. Minutes of work session. Public testimony. Chairman's and Executive Director's report. Audit and Finance committee-Budget report; Fiscal Year (FY 1999 Operating Budget/Agency Action Plan; FY 1999 Health Care Financing Administration (HCFA) funding distribution; Recommendation to distribute supplemental FY 1998 HCFA funds; Carryover funds allowance for purchase of AIM system; FY 1999 Internal Audit; Plan; Internal Audits of Area Agency on Agency (AAA) Monitoring and Contract Management System; Statewide needs assessment update; Audit updates. AAA Operations Committee-Publish administrative rule for final adoption. Planning Committee-State planning process development; Request for proposal status update. Options for Independent Living Advisory Committee-Report on evaluation. Adoption of census figure to use with funding formulas. Governor's Conference on Aging report. Discussion/possible action on Sunset Advisory Commission requests/issues from July 2 public hearing. General announcements. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/440-6840.  
Filed: July 22, 1998, 11:43 a.m.

TRD-9811585

◆ ◆ ◆  
Wednesday, August 13, 1998, 2:00 p.m.

4900 North Lamar Boulevard, Brown-Heatley Building, Room 5501

Austin

Planning Committee

AGENDA:

Consider and possibly act on:

call to order

minutes of May 13, 1998, meeting

planning Director's report

state planning process development

request for proposal update

adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/440-6840.  
Filed: July 22, 1998, 11:43 a.m.

TRD-9811584

◆ ◆ ◆  
**Texas Commission on Alcohol and Drug Abuse**

Thursday, July 23, 1998, 11:00 a.m.

Highway 281 South, Delicias Restaurant

Rachal

Regional Advisory Consortium (RAC), Region 11

AGENDA:

call to order; welcome and introductions of guests; approval of minutes; old business; border task force; membership committee, and managed care new business; 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 15, 1998, at 1:07 p.m.

TRD-9811150

◆ ◆ ◆  
**Texas Alcoholic Beverage Commission**

Monday, July 27, 1998, 1:30 p.m.

5806 Mesa Drive, Suite 185

Austin

AGENDA:

1:30 p.m. — call to order.

Convene in open meeting.

Announcement of executive session

- a. briefing regarding operations of the general counsel's office; and
- b. Venner v. TABC.

Continue open meeting

2. Take action, including a vote, if appropriate on topics listed for discussion under executive session.

3. Recognition of agency employees with 20 or more years of services.

4. Approval of minutes of June 22, 1998, meeting; discussion, comment, possible vote.

5. Administrator's report

6. Discussion of marketing practices rule, 16 TAC §45.109 (Restocking and Rotation of Alcoholic Beverages), 16 TAC §45.110 (Inducements), 16 TAC §45.113 (Gifts, Services and Sales) and 16 TAC §45.113 (Gifts, Services and Sales) and 16 TAC §45.117 (Gifts and Advertising Specialties); discussion, comments, possible vote.

7. Consider publication of new rule 16 TAC §45.100 (Advertising and Promotion in Public Owned Facilities); discussion, comment, possible vote.

8. Consider acceptance of gifts from the 100 Club of Houston to fund video and recording equipment to assist with undercover operations; discussion, comment, possible vote.

9. Consider Legislative Appropriations Request for 2000-2001 biennium; discussion, comment, possible vote.

10. Public comment.

11. Adjourn

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, 512/206-3217.  
Filed: July 17, 1998, 8:23 a.m.  
TRD-9811268



**Texas Department of Banking**

Thursday, August 20, 1998, 1:30 p.m.

Finance Commission Building, 2601 North Lamar Boulevard  
Austin

Prepaid Funeral Guaranty Fund Advisory Council

AGENDA:

- A. Review and approval of minutes of the August 20, 1997 prepaid funeral guaranty fund advisory council meeting
  - B. Discussion of the report of activities of the guaranty fund for the period May 1, 1997-June 30 1998
  - C. Discussion of and vote to approve claims of \$3,500 or less authorizes by the commissioner to be paid from the guaranty funds since August 20, 1997
  - D. Discussion of an vote to approve claims greater then \$3,500 filed against the guaranty fund since August 20, 1997
  - E. Discussion of and vote to approve the guaranty fund investment officer report
  - F. Discussion of an possible vote to approve changing the investment officer report
  - G. Review of candidates for the 1999-2000 industry member
  - H. Discussion of future meeting dates
- Contact: Everett D. Jobe, 2601 North Lamar Boulevard, Austin, texas 78705, 512/475-1300.  
Filed: July 21, 1998, 11:13 a.m.  
TRD-9811488



**State Bar of Texas**

Friday, June 24, 1998, 10:00 a.m.

Doubletree Guests Suites, 303 West 15th Street  
Austin

Texas Commission for Lawyer Discipline

EMERGENCY REVISED AGENDA:

PUBLIC SESSION: Call to order/introductions/adoption of minutes/  
CLOSED SESSION: Discuss authorization of General Counsel to make, accept or reject offers or take other appropriate action with respect to pending attorney discipline matters, and matter pending before evidentiary panels of grievance committee; Discuss the case of In Re: Hearing Before the District 4C Disciplinary Committees; Discuss assignment of special counsel to pending disciplinary cases; Discuss personnel matters/ PUBLIC SESSION RECONVENED: Discuss an take appropriate action on those matters discussed during Closed Session/Review and discuss statistical report; the Commission's compliance with applicable rules and policies and make recommendations for needed changes in the disciplinary or disability procedures; the

budget and operations of the Commission and the General Counsel/ Chief Disciplinary Counsel's office; grievance committee issues; the Special Counsel Program; future meetings; other matters as may appropriately come before the Commission/Receive public comment/ Adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 800/204-2222.  
Filed: July 16, 1998, 11:36 a.m.  
TRD-9811232



Friday, June 24, 1998, 10:00 a.m.

Doubletree Guests Suites, 303 West 15th Street  
Austin

Texas Commission for Lawyer Discipline

EMERGENCY REVISED AGENDA:

The location of the meeting has been moved from the Doubletree Guest Suites, 300 West 15th Street, Austin, Texas 78701 to the First State Bank Building, 400 West 15th Street, 3rd Floor Conference Room, Austin, Texas 78701.  
Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 800/204-2222.  
Filed: July 21, 1998, 3:27 p.m.  
TRD-9811513



**State Board of Barber Examiners**

Tuesday, August 4, 1998, 9:00 a.m.

William B. Hobby State office Building, 333 Guadalupe Tower 2 Room 400A  
Austin

Board of Directors

AGENDA:

- 1. Read and possibly approve Board minutes of June 2, 1998
- 2. Discussion and possible ratification of chairman's approval of SBBE strategic plan, 1999-2003, as filed June 12, 1998.
- 3. Discussion and possible action regarding June 30, 1998 implementation status of State Auditor's Office recommendations.
- 4. Discussion and possible action on SBBE filing of Rule Review Plan by August 31, 1998.
- 5. Discussion and possible action on renewal of inter-agency contract with Texas Cosmetology Commission.
- 6. Discussion and possible action regarding recommendation to establish a barber inspector travel policy, including the designation of eight cities as SBBE regional headquarters for barber inspector staff.
- 7. Discussion and possible on SBBE Legislative Appropriation Request (LAR), Biennium Beginning September 1, 1999.
- 8. Discussion and possible action on an individual student's request for early written examination pursuant to Texas Barber Law Section 11(c).
- 9. Discussion and possible action regarding the adoption of a SBBE Board Governance, Philosophy and Policy Guide.



10. Discussion and possible action regarding attendance at the National Association of Barber Board 72nd Annual Conference, September 21–24, 1998.

11. Discussion and possible on Texas Department of Health request for TSBBE review and recommendations on proposed changes to the following rules concerning conditions of Barber Shops, Barber School, and Colleges.

25 TAC §265.91–Shop Conditions;

25 TAC §265.95–Instruments to be cleaned and disinfected as the following proposed new rules:

25 TAC §265.103–Definition of Wet Sanitizer;

25 TAC §265.104–Disinfecting Manicure Instruments while in Use on Client; and

25 TAC §265.105–Instruments and Supplies

12. Review and discussion Barber Inspector’s Working Conference, July 6–8, 1998.

13. Executive Director’s Report

Adjourn The board may go into executive session any agenda item if authorized by the Open Meetings Act, Government Code, Chapter 551.

Contact: Will K. Brown, 333 Guadalupe Suite 2–110, Austin, Texas 78701, 512/305–8475.

Filed: July 22, 1998, 8:00 a.m.

TRD-9811529



## **Texas Bond Review Board**

Friday, July 24, 1998, 10:00 a.m.

Clements Building Committee Room #5, 300 West 15th Street

Austin

AGENDA:

I. call to order

II. approval of minutes

III. consideration of proposed issues

A. Texas Public Finance Authority-General Obligation Commercial Paper Notes for Texas Department of Criminal Justice

B. Texas State University System-Revenue Financing System and Refunding Bonds

C. Texas State Affordable Housing Corporation (doing business as Texas Star Mortgage collateralized mortgage loan (President’s Corner Apartments)

IV. Other Business

A. Discussion and possible approval of plan to review agency rules

B. Briefing on agency legislative appropriation request

V. Adjourn

Contact: Jose Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, 512/463–1741

Filed: July 16, 1998, 2:44 p.m.

TRD-9811253



## **Children’s Trust Fund of Texas Council**

Tuesday, July 28, 1998, 9:30 a.m.

8929 Shoal Creek Boulevard, Suite 200

Austin

AGENDA:

call to order, approve April 6, 1998 minutes

discuss and take possible action:

draft policy for CTF Council Investment Options

Discuss and take action:

review and adopt the agency rule review plan

review and adopt rule changes

council approval for funding new grants for FY 1999

council approval for funding renewal of FY 1998 grants

council approval to continue local CTF funding in El Paso from contributions

council approval of conference sponsorships

council approval of the FY 1999–2003 Strategic plan

council approval of FY 2000–2001 legislative appropriations request

council approval of FY 1999 Family PRIDE Council Memorandum of Agreement

General Discussion

Sunset review update

staff reports

Set next board meeting date

adjourn

Contact: Sarah Winkler, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757–6854, 512/458–1281.

Filed: July 20, 1998, 11:13 a.m.

TRD-9811417



## **State Board of Dental Examiners**

Friday, August 7, 1998, 1:30 p.m.

SBDE offices, 333 Guadalupe, Tower 3, #800

Austin

Dental Hygiene Advisory Committee

AGENDA:

I. call to order

II. roll call

Discussion and a vote may be called for on all items under the following heading:

III. Review and approval past minutes

IV. Discuss and review Rule 104.1, Requirement

Discussion and a vote may be called for on all items under the following heading:

V. Discuss and consider proposing amendments to Rule 115. 20, Dental Hygiene Advisory Committee-purpose and composition

VI. Discuss use of dentipatch by dental hygienists at WREB examinations

VII. Discuss agency's Strategic Plan

VIII. Discuss DHAC's proposed amendments to the Dental Practice Act, Article 4551b, Exceptions

IX. Announcements

X. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: July 21, 1998, 10:10 a.m.

TRD-9811522



## Texas Planning Council for Developmental Disabilities

Thursday, August 6, 1998, 9:30 a.m.

Sheraton Austin Hotel, 500 North IH-35

Austin

Executive Committee

AGENDA:

Thursday, August 6, 1998, 9:30 a.m.

call to order

I. introductions

II. public comments

III. approval of minutes of May 7, 1998

IV. chair's report

V. executive director's report

VI. TPCDD recommendations to Sunset Commission

VII. consideration of FY 99 budget

VIII. FY 2000-2001 appropriations request

IX. review of committee of the whole recommendations

X. review of TRC/TPCDD management agreement

XI. review of stipends applications

XII. other discussion items

12:15 p.m. adjourn

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 Roslinda Lopez at 512/424-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-4080.

Filed: July 22, 1998, 9:00 a.m.

TRD-9811544



Thursday, August 6, 1998, 1:30 p.m.

Sheraton Austin Hotel, 500 North IH-35

Austin

Planning Committee

AGENDA:

Thursday, August 6, 1998, 1:30 p.m.

call to order

I. introductions

II. public comments

III. approval of minutes

IV. staff update

A. review of planning calendar

B. grant projects update

V. discussion of committee of the whole input

VI. consideration of funding requests

VII. consideration of new funding activities

VIII. other discussion items

5:00 p.m. adjourn

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 Roslinda Lopez at 512/424-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-4080.

Filed: July 22, 1998, 9:00 a.m.

TRD-9811542



Thursday, August 6, 1998, 1:30 p.m.

Sheraton Austin Hotel, 500 North IH-35

Austin

Advocacy and Public Information Committee

AGENDA:

Thursday, August 6, 1998, 1:30 p.m.

call to order

I. introductions and public comments

II. approval of minutes of February 12, 1998, meeting

III. Sunset Review and Activities

IV. Federal Policy/Legislation

A. appropriations

B. Individuals with Disabilities Education Act (IDEA)

C. managed care protections

V. state policy/legislation

A. agency Sunset review/updates

B. Children Health Insurance Program (CHIP)

C. Texas Healthy Kids Corporation

D. Medicaid Managed Care

- E. Implementation of Legislation from the 75th Session
- F. Interim Committee on Home Health and Assisted Living
- VI. Public Information Report

5:00 p.m. adjourn

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 Roslinda Lopez at 512/424-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-4080.

Filed: July 22, 1998, 9:00 a.m.

TRD-9811545



Friday, August 7, 1998, 8:30 a.m.

Sheraton Austin Hotel, 500 North IH-35, Travis East and West Room  
Austin

Council

AGENDA:

Friday, August 7, 1998, 8:30 a.m.

call to order

- I. introductions and council members, staff and visitors
- II. public comments
- III. approval of minutes of council meeting and committee of the whole
- IV. chair's report
  - A. nominating committee report
  - B. designation of committee chairs
  - C. other discussion items
- V. executive director's report
  - A. staffing update
  - B. budget status report
  - C. other discussion items
- VI. Executive Committee report
  - A. Consideration of FY 99 budget
  - B. FY 2000-2001 LAR recommendations
  - C. review of TPCDD/TRC management agreement
  - D. other discussion items
- VII. discussion of Sunset Review of TPCDD
  - A. overview of Sunset Review Process
  - B. recommendations to Sunset Commission
- VII. Advocacy and public information committee report
  - A. state policy issues
  - B. federal policy issues
- IX. grantee presentation
- X. planning committee report

- A. review of planning report
- B. consideration of funding request
- C. consideration of new funding activities
- D. other discussion items

3:00 p.m. adjourn

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 Roslinda Lopez at 512/424-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-4080.

Filed: July 22, 1998, 9:00 a.m.

TRD-9811543



## **Interagency Council on Early Childhood Intervention**

Tuesday, July 28, 1998, 10:00 a.m.

4900 North Lamar

Austin

Board

AGENDA:

public comment. discussion and approval of minutes from the June 23, 1998, meeting. Discussion and approval of Advisory Committee and Director's Forum report. Discussion and approval of the agency fiscal year 1999 operating budget. Discussion and approval of the agency's legislative appropriations request for years 2000-2001. Discussion and approval of internal audit activities. Discussion and approval of fiscal year 1999 continuation awards for intervention providers. Discussion and update on the status of the Sunset review process. FYI

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 17, 1998, 4:34 p.m.

TRD-9811335



## **State Board for Educator Certification**

Thursday, August 6, 1998, 4:00 p.m.

1001 Trinity, Teacher Retirement Systems Building, Room 514, 5th Floor

Austin

AGENDA:

1. call to order; 2. executive session-discussion executive director job vacancy

Contact: Denise Jones, State Board for Educator Certification, Austin, Texas 512/469-3005.

Filed: July 30, 1998, 7:48 a.m.

TRD-9811469



Friday, August 7, 1998, 9:00 a.m.

1001 Trinity, Teacher Retirement Systems Building, Room 514, 5th Floor

Austin

AGENDA:

1. call to order; 2. approve May 1, 1998 minutes; 3. approve June 26–27, 1998, work session minutes; 4. executive session- discussion executive director job vacancy 5. executive director's update; a. budget report; b. planning update; c. update on investigations; d. staff update; e. staff update on SBEC Integrated Technology System (ITS); f. update on ASEP oversight protocols; g. other; 6. report from regarding standards committee 7. approve legislative appropriations request for the biennium beginning September 1, 1998; 8. approve funding of new centers for the professional development of teachers; 9. approve funding of centers for professional development of teacher models to address teacher shortages in critical subject area; 10. approve continued funding of centers for the professional development of teachers; 11. approve the centers for professional development of teachers at Baylor University, Texas A&M University at Corpus Christi, Sam Houston State University, and University of Houston-Victoria; 12. approve addition or deletion of programs at entities currently approved to deliver educator preparation; 13. discussion educator preparation issues; 14. amend the 1997–1998 fiscal year budget; 15. approve operating budget for the 1998–1999 fiscal year; 16. approve amendments to the agency strategic plan for fiscal year 1999–2003; 17. propose new 19 TAC Chapter 249, disciplinary proceedings and sanctions (including enforcement of the educator's code of ethics); propose amendment to 19 TAC §230.414, certificates for persons with criminal backgrounds; 18. discuss final recommendations of the advisory committee on education certificates for the certificate structure and core educator knowledge and skills; 19. propose new 19 TAC, Chapter 242, superintendent certificate; 20. propose new 19 TAC, Chapter 241, principal certificate; 21. adopt amendments to 19 TAC, Chapter 230, Subchapter U, assignment to public school personnel; 232. adopt new 19 TAC, Chapter 232, Subchapter M, types and classes of certificates issued, and Subchapter R, certificate renewals and continuing professional education requirements; 23. discussion proposed amendments to 19 TAC, Chapter 232, Subchapter R, §232.660, types of acceptable continuing professional education (CPE) activities; 24. propose amendments to 19 TAC, Chapter 230, Subchapter V, continuing education.

Contact: Denise Jones, State Board for Educator Certification, Austin, Texas 512/469–3005.

Filed: July 20, 1998, 7:47 a.m.

TRD-9811468



Friday, August 7, 1998, 9:00 a.m.

1001 Trinity, Teacher Retirement Systems Building, Room 514, 5th Floor

Austin

AGENDA:

1. call to order; 2. approve May 1, 1998 minutes; 3. approve June 26–27, 1998, work session minutes; 4. discussion and possible action of executive director job vacancy; a. executive session; b.

reconvene in open meeting c. possible action on the position and executive director. 5. executive director's update; a. budget report; b. planning update; c. update on investigations; d. staff update; e. update on SBEC Integrated Technology System (ITS); f. update on ASEP oversight protocols; g. other; 6. report from regarding standards committee 7. approve legislative appropriations request for the biennium beginning September 1, 1998; 8. approve funding of new centers for the professional development of teachers; 9. approve funding of centers for professional development of teacher models to address teacher shortages in critical subject area; 10. approve continued funding of centers for the professional development of teachers; 11. approve the centers for professional development of teachers at Baylor University, Texas A&M University at Corpus Christi, Sam Houston State University, and University of Houston-Victoria; 12. approve addition or deletion of programs at entities currently approved to deliver educator preparation; 13. discussion educator preparation issues; 14. amend the 1997–1998 fiscal year budget; 15. approve operating budget for the 1998–1999 fiscal year; 16. approve amendments to the agency strategic plan for fiscal year 1999–2003; 17. propose new 19 TAC Chapter 249, disciplinary proceedings and sanctions (including enforcement of the educator's code of ethics); propose amendment to 19 TAC §230.414, certificates for persons with criminal backgrounds; 18. discuss final recommendations of the advisory committee on education certificates for the certificate structure and core educator knowledge and skills; 19. propose new 19 TAC, Chapter 242, superintendent certificate; 20. propose new 19 TAC, Chapter 241, principal certificate; 21. adopt amendments to 19 TAC, Chapter 230, Subchapter U, assignment to public school personnel; 232. adopt new 19 TAC, Chapter 232, Subchapter M, types and classes of certificates issued, and Subchapter R, certificate renewals and continuing professional education requirements; 23. discussion proposed amendments to 19 TAC, Chapter 232, Subchapter R, §232.660, types of acceptable continuing professional education (CPE) activities; 24. propose amendments to 19 TAC, Chapter 230, Subchapter V, continuing education.

Contact: Denise Jones, State Board for Educator Certification, Austin, Texas 512/469–3005.

Filed: July 21, 1998, 4:57 a.m.

TRD-9811523



## State Employee Charitable Campaign

Thursday, July 23, 1998, 3:30 p.m.

3231 North McColl-Suite B

McAllen

Local Employee Committee-McAllen

AGENDA:

- I. call to order and discussion of agenda
- II. discussion of SECC timetable
- III. consider and take action regarding campaign goal
- IV. review training dates
- V. discuss group awards
- VI. consider and take action regarding next meeting date.

Contact: Thelma Garza, 200 South 10th Street, McAllen, Texas 78501, 906/686–6331.

Filed: July 15, 1998, 5:04 p.m.

TRD-9811203



Tuesday, July 28, 1998, 3:30 p.m.

2207 Line Avenue

Amarillo

Local Employee Committee-Amarillo

AGENDA:

A. Review and approve minutes of June 17, 1998—Dr. Lee Taylor

B. Update from State Campaign Manager-Millie Bingham

C. LCM Update -Julie Rios

1. Materials printed-Lubbock

2. Material ordered from UW Texas

3. SECC LE's-Santa Fe

D. Sub-Committee Reports — Sub-Committee-Chais

1. Kick-off plans and assignments-Tammie Cervantez

2. Coordinator Training-July/August-Tonya Detten

3. Incentive-trip details-Vivan Long/Julie Rios

Consider and taken action on trip details

E. Other-Dr. Lee Taylor

1. Higher Education Video Conference

2. Roundtable Discussion-fundraising discussion

a. Common Obstacles

b. Innovative ideas for increasing participation

c. Standard objections/replies

Contact: Julie Rios, 2207 Line Avenue, Amarillo, Texas 79106, 806/376-6359.

Filed: July 17, 1998, 9:47 a.m.

TRD-9811278



Wednesday, July 29, 1998, 10:00 a.m.

15th and Congress-Capitol Grounds, Capitol Extension, Room E1.012

Austin

State Policy Committee-Task Force Austin

AGENDA:

I. call to order and discussion of agenda-Lisa Price

II. policy development progress report-Lisa Price

III. state campaign manager's report-Laura Lucinda

IV. discuss and take possible action on the following-Lisa Price

Public comment will be accepted on each agenda items in this section IV.

Growth Strategies

strategies for increasing revenues

reduction of administrative costs

statewide campaign development

unserved state employees

tracking of pledge shrinkage

Improving Communications

communication between the State Policy Committee and Local Employee Committees

campaign forms

checklist of responsibilities

list of charities by county

Eligibility Requirements

local presence

requirement of "local" IRS form 990

V. Consider and take action regarding next meeting date-Lisa Price

VI. Public comment period for topics not on agenda.

VII. Adjourn

Contact: Laura Lucinda, 823 Congress, Suite 1103 Austin, Texas 78701, 512/478-6601.

Filed: July 17, 1998, 9:47 a.m.

TRD-9811277



## Texas Food and Fibers Commission

Thursday, August 27, 1998, 10:00 a.m.

Hirshfield-Moore House, 814 Lavaca

Austin

Commissioner

AGENDA:

1. overview of fy 98 commission activities

2. consideration of bylaws changes

3. consideration of rules review plan in accordance with sec 167 Article IX

review of executive director's performance

Contact: Jean L. VandeLune, 17360 Coit Road, Dallas, 75252, 972/231-0852

Filed: July 20, 1998 7:45 a.m.

TRD-9811467



## Texas Funeral Service Commission

Monday, August 3, 1998, 9:00 a.m.

510 South Congress Suite 206

Austin

Complaint Review Committee

AGENDA:

I. Convene, Kenneth J. Hughes, Acting Chair

II. Discussion and possible action concerning the following cases listed:

III. Public comment

Adjourn

Note: The Committee may meet in Executive Session on any item listed in this notice as provided by the Open Meetings Act, Texas Government Code, Annotated, Section 551.071.

Contact: Eliza May, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716, 512/388-2593.

Filed: July 22, 1998, 4:36 p.m.

TRD-9811611



### **General Services Commission**

Friday, July 24, 1998, 9:00 a.m.

Central Services Buildings, 1711 San Jacinto, Room 200A

Austin

Uniform General Conditions Advisory Committee

AGENDA:

I. Call to order; II. Introductions of Committee Members; III. Consideration and potential action on Uniform General Conditions ("UGC") Advisory Vision, Mission and Goals; IV. Consideration and potential action on UGC Advisory Committee Operating Rules; V. Consideration and potential action on the Assignment of Subcommittees; VI. Consideration and potential action on the Adoption of Regular Meeting Schedule; VII. Overview of the "UGC for the State of Texas Building Construction Contracts" Document for Committee Use; VIII. Consideration and potential action on Setting Next Meetings' Agenda; IX. Adjourn.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: July 16, 1998, 10:41 a.m.

TRD-9811219



Tuesday, July 28, 1998, 9:30 a.m.

Central Services Buildings, 1711 San Jacinto, Room 402

Austin

Uniform General Conditions Advisory Committee

AGENDA:

I. Call to order; II. Staff, Guests, and Members Present; III. Approval of Minutes; IV. Presentation of Awards V. Consideration of the following agenda items: Item 1. Consideration and potential action on Fiscal Year 2000/2001 Legislative Appropriation Exceptional Item Requests. Item 2. Consideration and potential action on the proposed repeal of 1 TAC, Chapter 123 concerning the Facilities Construction and Space Management Division, and the proposed new 1 TAC, Chapter 123 concerning the Facilities Construction and Space Management Division. Item 3. Consideration and potential action on authorizing an amendment to the change order contingency fund for Project No. 98-012-30, Parking Garage 2E, Austin, Texas, in the amount of \$650,000 for a total of \$750,000. Item 4. Program Issues: A. Construction Project Status Report on Existing Construction Projects. B. Needs Analysis Consultants Preliminary Report. C. Introduction of Vendor Advisory Committee Members Present; VI. Executive Session to consider personnel matters pursuant to the provisions of Texas Government; Code Section 551.074; VII. Executive Session to consider the status of the purchase of real property pursuant to the provisions of Texas Government Code

Section 551.072; VIII. Executive Session to consult with Legal Counsel concerning pending litigation pursuant to the provisions of Texas Government Code Section 551.071; IX. Adjournment.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: July 16, 1998, 4:00 p.m.

TRD-9811263



### **Texas Health Care Information Council**

Thursday, July 30, 1998, 3:00 p.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Room 3501

Austin

HMO Technical Advisory Committee

AGENDA:

The Committee will convene in open session, deliberate, and possibly take formal action on the following items: Call to order; approval of minutes; staff update on the HEDIS data collections; staff update on the HEDIS Consumer Guide to Commercial HMO's discussion 1999 HEDIS data collection effort and selection of HEDIS subset; Discuss Dental Quality Measurement Standards; and Adjourn.

Contact: Jim Loyd, 4900 North Lamar Boulevard, Room 3407, Austin, Texas 78751, 512/424-6490 or fax 512/424-6491.

Filed: July 22, 1998, 12:48 p.m.

TRD-9811591



### **Statewide Health Coordinating Council**

Thursday, July 30, 1998, 9:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Plan Committee

AGENDA:

The committee will discuss and possibly act on: chairman's opening remarks; staff presentation of the draft of the State Health Plan; committee's discussion of the plan; recommended changes to the plan; approval by the Plan Committee to distribute the draft State Health Plan for public comment; 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: Rick Danko, 1100 West 49th Street, Austin, Texas 78756, 512/458-7261.

Filed: July 21, 1998, 10:12 a.m.

TRD-9811485



### **Texas Department of Health**

Friday, August 7, 1998, 9:00 a.m.

Conference Room 2.11, One Technology Center, 2201 Donely Drive

Austin

Wholesale Drug Distributors Advisory Committee

AGENDA:

The committee will introduce members and staff and will discuss and possibly act on: election of advisory committee officers; current developments in the Texas Department of Health drug program; and proposed rules for wholesale drug distributions (25 TAC, Chapter 229).

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: Angela Benschel, 1100 West 49th Street, Austin, Texas 78756, 512/719-0237.

Filed: July 16, 1998, 11:10 a.m.

TRD-9811222



**Texas Health Insurance Risk Pool**

Tuesday, July 28, 1998, 9:00 a.m.

301 Congress Avenue, Suite 360

Austin

Board of Directors, Combined Strategic Planning Committee and Staffing Committee, Grievance Committee

AGENDA:

I. Executive Session: Committees or the Board of Directors may meet in Executive Session in accordance with Texas Open Meetings Act to discuss personnel matters or to seek advice of counsel.

II. Board of Directors: 1. Management of the Pool; 2. Interview and possible hire of Executive Director; 3. Third Party administrator; 4. other management or administrative matters; 6. public comment; 7. setting of next meeting.

Contact: C. S. LeShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, 512/499-0775.

Filed: July 21, 1998, 3:14 a.m.

TRD-9811445



**Texas Healthy Kids Corporation**

Friday, July 24, 1998, 9:30 a.m.

Brown-Healy Building, 4900 North Lamar Boulevard, Room 3501

Austin

Board of Directors

AGENDA:

This meeting is being posted as an emergency, because to delay the meeting will place in jeopardy THKC's sustained ability to provide access to affordable health coverage for uninsured children in Texas. To ensure a sustainable program that will meet the needs of a very vulnerable population of children, statewide implementation in conjunction with the first of the school year is critical, because it effects maximum awareness of, and enrollment in the program. Large enrollment is critical for any insurance program. Award of insurance vendors must proceed without any delay to ensure that the program can be implementation in mid-August.

Persons with disabilities who require auxiliary aids, services, or materials in alternate format, please contact THKC at least 3 business days before the meeting.

Contact: Tyrette Hamilton, P.O. Box 1506, Austin, Texas 78767, 512/494-0061. Ext. 201 or fax 512/494-0278.

Filed: July 17, 1998, 9:34 a.m.

TRD-9811275



**Texas Higher Education Coordinating Board**

Wednesday, July 30, 1998, 3:00 p.m.

Worthington Hotel Fort Worth, 200 Main Street

Fort Worth

Family Practice Residency Advisory Committee

AGENDA:

Review pilot project proposals.

Contact: Stacy Silverman, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6206.

Filed: July 15, 1998, 3:38 p.m.

TRD-9811179



**Texas Department of Housing and Community Affairs**

Friday, July 24, 1998, 8:00 a.m.

507 Sabine Street, Room 437

Austin

Program Committee

AGENDA:

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following:

Approve minutes of June 12, 1998 meeting

Approve amendments to HOME Program Rules to be Published in Texas Register

Approve Amendments to HOME Program Contracts

Approve HOME Program Awards for 1998 for Owner Occupied, Tenant Based Rental Assistance and Homebuyer Assistance

Ratify HOME/Weatherization Awards

Approve Housing Trust Fund Awards

Approve CASA Fronteriza Loan Program Award to CDC of Brownsville

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas, ADA Responsible Employee, at 512/475-3943 or Relay Texas at 800/735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: July 16, 1998, 3:09 p.m.

TRD-9811259



Friday, July 24, 1998, 8:30 a.m.

507 Sabine Street, Room 437

Austin

Program Committee

AGENDA:

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following:

Approve minutes of May 18, 1998 meeting

Approve recommendations on Applications for 1998 for the Low Income Housing Tax Credit Program

Approve Determinations on Forward Commitments not to Exceed 15% of the 1999 Per Capita Credits.

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas, ADA Responsible Employee, at 512/475-3943 or Relay Texas at 800/735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: July 16, 1998, 2:09 p.m.

TRD-9811247



Friday, July 24, 1998, 10:00 a.m.

507 Sabine Street, Room 437

Austin

Board

AGENDA:

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following:

Approve minutes of June 12, 1998 meeting

Approve recommendations on Applications for 1998 for the Low Income Housing Tax Credit Program

Approve Determinations on Forward Commitments not to Exceed 15% of the 1999 Per Capita.

Approve Amendments to HOME Program Rules to be Published in Texas Register

Approve Amendments to HOME Program Contracts

Approve HOME Program Award for 1998 for Owner Occupied, Tenant Based Rental Assistance and Homebuyer Assistance

Ratify HOME/Weatherization Awards

Approve Housing Trust Fund Awards

Approve CASA Fronteriza Loan Program Award to CDC of Brownsville

Ratify Exemption Plan to Exceed Department's Salary Cap

Approve change of Trustee for Residential Mortgage

Approve Manufactured Housing Cases: In the Matter of Len Eaton. Docket Number 332-98-0347, Complaint No. MDH 199001579M

In the matter of William Blackwood doing business as Blackwood Mobile Home Service and Transport Docket No 332-98-0347, Complaint Numbers MHD 1996001445C, and MHD 1997001578M

In the matter of Juan Rendon doing business as Rendon's Docket Number 332-98-0336, complaint numbers MHD 1997001383D, MHD 1997002349D, MHD 1997003303D and MHD 1998000955I

Executive Session: Personnel Matters: Litigation and Anticipated Litigation (Potential or Threatened under Sec 551.071 and 551.103, Texas Government Code Litigation Exception)-El Cenizo and Rio Bravo Settlement; Personnel Matters Regarding Duties and Responsibilities in Relationship to Budget; Adjourn

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: July 16, 1998, 3:55 p.m.

TRD-9811260



### Community on Jail Standards

Thursday, July 30, 1998, 9:00 a.m.

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA:

Financial Report/Budget/LAR/Resolution.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, 512/463-5505.

Filed: July 21, 1998, 8:09 a.m.

TRD-9811472



### Board for Lease of University Lands

Tuesday, July 29, 1998, 10:00 a.m.

The University of Texas System, Ashbel Smith Hall-9th Floor, 201 West 7th Street

Austin

AGENDA:

1. Approval of the minutes of the June 16, 1998, meeting of the Board of Lease of University Lands.

2. Update regarding Regular Oil and Gas Lease Sale No 94 and Frontier Oil and Gas Lease Sale No. 94-A schedule for November 1998.

3. Scheduling of discussion relating to lease provisions and scope of review.

4. Lease awards for Frontier Oil and Gas Lease Sale No 93-A1.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services may contact Loretta Loyd at 512/499-4462 at least two work days prior to the meeting date so that appropriate arrangements can be made.

Contact: Pamela s. Bacon, 201 West 7th Street, Austin, Texas 78701, 512/499-4462.

Filed: July 21, 1998, 3:52 p.m.



TRD-9811516

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**Texas Department of Licensing and Regulation**

Monday, August 3, 1998, 9:30 a.m.

E.O. Thompson Building, 920 Colorado, 4th Floor  
Austin

Texas Commission of Licensing and Regulation

**AGENDA:**

The Commission will hold a regular meeting according to the following outline: A call to order; B. roll call and certification of quorum; c. swearing in of Commissioner Parker; D. contested cases; E. agreed orders; F. recommended legislative changes to Article 9100; G. possible action on proposed rule amendments to chapter 60; H. report on regulation of shoot wrestling or shoot fighting under article 8501-1; I. possible action to abolish or continue in existence, the Auctioneer Education Advisory Committee; J. possible action to abolish or continue in existence, the Property Tax Consultant Advisory Council; K. Possible action for fee adjustments for licenses, registrations and certificates to Air Conditioning and Refrigeration Contractor Law, Article 8861. Architectural Barriers Act, Article 9102, Auctioneer Act, Article 8700, Boiler Inspection Law, Chapter 755, Health and Safety Code, Boxing Act, Article 8501-1, Career Counseling Act, Article 5221a-8, Elevators, Escalators, and Related Equipment, Chapter 754, Health and Safety Codes, Regulation of Certain Temporary Common Workers, Article 5221a-10, Industrialized Housing and Building Act, Article 5221f-1, Personnel Employment Services Act, Article 5222a-7, Regulation of Property tax Consultants Act, Article 8886, Staff Leasing Services Act, Article 9104, Talent Agency Act, Article 5221a-9, Transportation Service Provider, Article 6675e, Water Well Drillers, Chapter 32, Texas Water code, Water Well Pump Installers, Chapter 33, Texas Water Code; L. Action on Legislative Appropriations Request; M. Staff Reports; N. Public Comment; O. Executive Session; P. Discussion of date, time and location of next Commission meeting; Q. Open Session; Report by Commissioner Chistakos on the Architectural Barriers Advisory Council meeting of June 22, 1998; R. Workshop on Enforcement Division activities; S. Adjournment.

Contact: Kay Mahan, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, 512/463-3173.

Filed: July 21, 1998, 2:28 p.m.

TRD-9811506

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**Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association**

Tuesday, July 28, 1998, 10:00 a.m.

301 Congress Avenue, Suite 500

Austin

Board of Directors

**AGENDA:**

Consideration and possible action on: 1) minutes of April 20, 1998 Board meeting; 2) guaranty association matters: 3) executive session; 4) matters discussed in Executive Session; 5) impaired/insolvent estates; 6) committee reports; 7) financial matters; 8) policy and procedure manual; 9) next meeting.

Contact: C.S. LaShelle, 301 Congress, #500, Austin, Texas 78701, 512/476-5101.

Filed: July 21, 1998, 9:53 a.m.

TRD-9811439

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Tuesday, July 28, 1998, 10:00 a.m.

301 Congress Avenue, Suite 500

Austin

Board of Directors

**REVISED AGENDA:**

Consideration and possible action on: 1) minutes of April 20, 1998 Board meeting; 2) guaranty association matters: 3) executive session; 4) matters discussed in Executive Session; 5) impaired/insolvent estates; 6) committee reports; 7) financial matters; 8) policy and procedure manual; 9) next meeting.

Contact: C.S. LaShelle, 301 Congress, #500, Austin, Texas 78701, 512/476-5101.

Filed: July 21, 1998, 9:53 a.m.

TRD-9811482

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Tuesday, July 28, 1998, 10:00 a.m.

301 Congress Avenue, Suite 500

Austin

Governance Committee

**AGENDA:**

1) counsel to Board of Directors; 2) other matters

Contact: C.S. LaShelle, 301 Congress, #500, Austin, Texas 78701, 512/476-5101.

Filed: July 21, 1998, 2:44 p.m.

TRD-9811441

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Tuesday, July 28, 1998, 10:00 a.m.

301 Congress Avenue, Suite 500

Austin

Legislative Committee

**AGENDA:**

Recommendations regarding legislative matters

Contact: C.S. LaShelle, 301 Congress, #500, Austin, Texas 78701, 512/476-5101.

Filed: July 21, 1998, 2:44 p.m.

TRD-9811440

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**Texas Council on Offenders with Mental Impairments**

Monday-Tuesday, August 3-4, 1998, 11:00 a.m.

Del Lago Golf Resort and Conference Center, 601 Del Lago Boulevard, Tejas I

Montgomery

Full Council

AGENDA:

I. call to order/roll call

II. introduction of guests/public comments

III. approval of minutes

IV. LAR request

V. exceptional funding request

VI. biennial report

VII. status report on MOU's

VIII. Sunset Commission Status Report

IX. Adjournment

Contact: Marcia L. Powders, 8610 Shoal Creek Boulevard, Austin, Texas 512/406-5406.

Filed: July 15, 1998, 2:41 p.m.

TRD-9811157



### **Texas Natural Resource Conservation Commission**

Wednesday, July 29, 1998, 8:30 a.m., 9:30 a.m. and 1:00 p.m. (respectively.)

Building E. Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Executive session; hearing request; authorization to construct; contracts; public water supply default orders; public water supply enforcement agreed orders; air enforcement default order; air enforcement agreed orders; superfunds; industrial waste discharge enforcement agreed order; municipal waste discharge enforcement agreed order; agricultural enforcement agreed order; industrial hazardous waste enforcement agreed order; rules; executive session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 a.m. agenda starts 8:45 until 9:25) The following items will be considered at the 1:00 p.m. agenda: Proposal for Decision; miscellaneous items. (Registration for 1:00 p.m. agenda starts at 12:30 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: July 20, 1998, 4:00 p.m.

TRD-9811448



Thursday, July 30, 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 the following three requests:

Requests filed with the Texas Natural Resource Conservation Commission (Commission) by Mr. Ken Andrews and by Mr. J.W. Lightfoot for review of the connection fee of Bright Star-Salem Water Supply Corporation (WSC). Bright Star-Salem WSC provides water utility service in Kaufman and Wood Counties, Texas.

Bright Star-Salem WSC has filed a request with the Commission for a cease and desist order against J. W. Lightfoot. Bright Star-Salem WSC is alleging that Mr. Lightfoot is promising buyers that he will provide water for their purchased lots.

The above matters have been designated as SOAH Docket No. 582-98-1219.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: July 15, 1998, 3:46 p.m.

TRD-9811185



Thursday, July 30, 1998, 1:30 p.m.

Building E. Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except for agenda item #2 or by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin Texas 78753, 512/239-3317.

Filed: July 22, 1998, 10:50 a.m.

TRD-9811568



Tuesday, August 11, 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 by Cody Lewis doing business as Water Works I & II for a change in water rates with the Texas Natural Resource Conservation Commission (Commission) effective April 1, 1998, for its service area located in Llano County, Texas SOAH Docket No. 582-98-1221.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: July 16, 1998, 9:40 a.m.

TRD-9811211



Tuesday, August 25, 1998, 9:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, 11th Floor, Suite, 1100

Austin

**AGENDA:**

For a hearing before a office of administrative hearing judge on an application filed by Chisholm Trail Special Utility District to amend Certificate of Convenience and Necessity (CCN) No. 11590 and to decertify a portion of CNN No. 12369 issued to the City of Georgetown with the Texas Natural Resource Conservation Commission (Commission) to provide water utility service in Williamson County, Texas.

This matter has been designated as SOAH Docket No. 582-98-1307.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3445.

Filed: July 21, 1998, 9:32 a.m.

TRD-9811481



Thursday, August 27, 1998, 7:00 p.m.

Alton Senior Citizen Hall, 200 West Main

Alton

**AGENDA:**

For an informal public meeting concerning an application by Ruben's Vacuum and Hydrojetting Services, Inc. to the Texas Natural Resource Conservation Commission for Proposed Registration No. MSW 43002 to construct and operate V municipal solid waste liquid waste processing facility. The proposed site contains about 1.456 acres of land and, if approved, will approximately 40,000 gallons of liquid waste per day (grease and grit trap waste). The proposed facility is to be located in Hidalgo County, Texas, approximately 0.7 miles northwest of the intersection of FM 492 and FM 2221, approximately 5.0 miles north of the City of Alton.

Contact: Annie Tyrone, P.O. Box 13087, Austin, Texas 78711-3087, 1/800/687-4040.

Filed: July 22, 1998, 10:18 a.m.

TRD-9811561



**Texas Pension Review Board**

Tuesday, August 4, 1998, 1:30 p.m.

State Capitol Extension, Committee Room E1.016

Austin

**AGENDA:**

1. meeting called to order
2. roll call
3. reading and action on minutes of previous meeting
4. discussion and action on PRB 2000-2001 Legislative Appropriation Request
5. discussion and action on PRB Plan for reviewing rules
6. committee reports
  - A. Acturial-chair Leonard Cargill/compliance update-(Ginger Smith)
  - B. Administration-Chair Shad Rowe
  - C. Legislative-Chair Shari Shivers
  - D. Research-Chair Craig Goralski/database update (Kevin Deiters)

7. old business: discussion and possible action on city of Dallas/ employees retirement fund

8. set date and location for next board meeting

9. announcements and invitation for audience participation

10. executive director's report

11. chairman's report

12. adjournment

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, 512/463-1736.

Filed: July 15, 1998, 3:11 p.m.

TRD-9811171



**Texas State Board of Plumbing Examiners**

Friday, August 7, 1998, 9:00 a.m.

929 East 41st Street

Austin

Board

**AGENDA:**

Texas State Board of Plumbing Examiners may go into executive session on any agenda item if authorized by the Open Meetings Act, Government Code, Chapter 551.

1. Review applications for the Administrator position and select candidates for interviews.

2. Reports on different facilities available for board meeting and possible action on choosing a location other than the agency office for the September 14 board meeting.

Contact: Stephenie A. Spiars, 929 East 41st Street, Austin, Texas 512/458-2145, Ext. 222.

Filed: July 16, 1998, 9:40 a.m.

TRD-9811213



**Texas Department of Protective and Regulatory Services**

Friday, August 7, 1998, 10:00 a.m.

Texas Department of Health, Tower Building, Room, T607, 1100 49th Street

Austin

Child Fatality Review, State Committee

**AGENDA:**

Welcome and Introductions. reports: 1. coordinator report; 2. BVS report. Old Business: 1. annual report update; 2. SIDS Legislation; 3. other legislative issues; 4. investigation protocol manual; 5. video update. lunch. new business: 1. confidentiality and CFRT legislation; 2. board vacancies; FY 1998 meeting dates; 4. other housekeeping matters. adjourn.

Contact: Janece Keetch, P.O. Box 149030, Austin, Texas 78714-9030, 512/438-4693.

Filed: July 21, 1998, 11:25 a.m.

TRD-9811489

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## Texas Department of Public Safety

Thursday, July 23, 1998, 8:30 a.m.

312 North International Boulevard (Hwy 1015)

Weslaco

Governor's Division of Emergency Management, Drought Response and Monitoring Committee

### AGENDA:

Welcome and introductions

Technical Assistance and Planning Subcommittee Report

Drought and Water Supply Monitoring Subcommittee Report

Action Items: Review of last meeting minutes and on-going strategies

Other issues and concerns

adjournment

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 Juan Perales at 512/424-2452 three work days prior to the meeting so that appropriate arrangements can be made.

Contact: Juan Perales, 5805 North Lamar Boulevard, Austin, Texas 78773-0220. 512/424-2452.

Filed: June 21, 1998, 1:27 p.m.

TRD-9811498

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## Railroad Commission of Texas

Tuesday, July 28, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room 1-111

Austin

### AGENDA:

In addition to the other items posted, the Commission will consider and may take action as appropriate on reports by all division directors regarding the current status of significant projects, division workload, and related matters.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711, 512/463-7033.

Filed: July 21, 1998, 2:45 a.m.

TRD-9811444

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Tuesday, July 28, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room 1-111

Austin

### AGENDA:

The Commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711, 512/463-7033.

Filed: July 17, 1998, 4:24 p.m.

TRD-9811325

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## Texas Real Estate Commission

Monday, July 27, 1998, 9:00 a.m.

Conference Room 235, TREC Headquarters Office, 1101 Camino La Costa

Austin

### AGENDA:

Call to order; minutes of June 15, 1998, commission meeting; staff reports; committee reports; general comments from visitors; Discussion and possible action to adopt amendment to 22 TAC §535.400, concerning registration of easement of right-of-way agents, and new 22 TAC §535.403, concerning renewal of registration; discussion only on proposed amendment to 22 TAC 535.92, concerning satisfaction of MCE requirements for license renewal; Executive session to discuss pending litigation pursuant to Texas Government Code, 551.071; Discussion and possible action to authorize payments from recovery funds; Discussion and possible action to readopt or propose amendment or repeal of 22 TAC Chapter 531; Discussion of comments on 22 TAC Chapter 533, concerning practice and procedure; Discussion and possible action to authorize filing notice of intention to review 22 TAC Chapter 534, concerning general administration; Discussion and possible action to authorize Wayne Thorburn to enter orders in contested cases and to authorize Loretta DeHay to file complaints under Texas Civil Statutes, Article 6573a, 15B(e); Discussion and possible action to approve questions and answers relating to use of new inspection report form; Discussion and possible action to propose amendment to 22 TAC 535.223, concerning standards inspection report forms; 22 TAC 539.51, concerning definition of employee of residential service company; Discussion and possible action to approve Legislative Appropriations Request for the biennium beginning September 1, 1999; Discussion and possible action to approve commemorative logo; Discussion and possible action concerning Internet advertising; Discussion and possible action to propose amendment to 22 TAC 535.66(h), requiring real estate course providers to read rule on disclosing questions; Consideration of complaint information concerning: Robin Rennel Legrand, Benjamin Bailey Zetsche Brenda Brunt Stephens, Gerald Craig Ferguson, Mark Elliott Kirklin; Motions for Rehearing, Modification, or Probation: Hearing No 98-57-972002, In the matter of the application to license Eric Shawn White as a Real Estate Salesperson; Hearing No. 97-135-971290, In the matter of Brian Lee Anthony; Hearing No. 97-57-970942, In the matter of Ron Chitsey; Entry of orders in contested cases; Scheduling of future meetings.

For ADA assistance, call Nancy Guevremont at 512/465-3923 at least two days prior to the meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, 512/465-3900.

Filed: July 17, 1998, 11:30 a.m.

TRD-9811286

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## Center for Rural Health Initiatives

Monday, July 27, 1998, 10:00 a.m.

Southwest Tower Building, 211 East 7th Street, 7th Floor Conference Room

Austin

Ad Hoc Committee of Executive Committee for Center for Rural Health Initiatives Working Session

AGENDA:

I. Review Sunset Findings and Recommendations and develop a response

II. Develop an Outline for a Strategic Plan

III. Consider Level 5 Trauma Designations

Contact: Carol Peters, 211 East 7th Street, Austin, Texas 512/479-8891.

Filed: July 17, 1998, 5:00 p.m.

TRD-9811345



## Texas State Board of Social Worker Examiners

Saturday, August 8, 1998, 9:00 a.m.

Lago Vista Club and Resort, 1918 American Drive

Lago Vista

Board

AGENDA:

The board will discuss and possibly act on: review/revisions of the mission and vision statements; and identification of critical issues, key tasks and priorities for fiscal year 1998-1999.

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: Shirley Bibles, 1100 West 49th Street, Austin, Texas 78756, 1/800/232-3162 or 512/719-3521.

Filed: July 21, 1998, 10:12 a.m.

TRD-9811483



Sunday, August 9, 1998, 9:00 a.m.

Lago Vista Club and Resort, 1918 American Drive

Lago Vista

Board

AGENDA:

The board will discuss and possibly act on: review/revisions of the mission and vision statements; and identification of critical issues, key tasks and priorities for fiscal year 1998-1999.

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: Shirley Bibles, 1100 West 49th Street, Austin, Texas 78756, 1/800/232-3162 or 512/719-3521.

Filed: July 21, 1998, 10:12 a.m.

TRD-9811484



## State Board of Examiners for Speech-Language Pathology and Audiology

Thursday, July 30, 1998, 8:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will meet to discuss and possibly act on: complaints (98-SA-0001; 98-SA-0004; 98-SA-0009; 98-SA-0012; 98-SA-0013; 98-SA-0014; 98-SA-0015; and 98-SA-0016) probation of C.T.; settlement offer of D.L.; application from K.H.; misrepresenting credentials (if degree is not from accredited university and in a non-related profession); guidelines for the schedule of sanctions; and other business not requiring action.

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: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, 512/834-6627.

Filed: July 16, 1998, 11:10 a.m.

TRD-9811223



Thursday, July 30, 1998, 11:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Speech-Language Pathology Scope of Practice Committee

AGENDA:

The committee will meet to discuss and possibly act on: development of guidelines for caseload limits; supervision of assistants and delegation of duties, including a draft sample form, and use of testimonials in advertising; and other business not requiring action.

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: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, 512/834-6627.

Filed: July 16, 1998, 11:11 a.m.

TRD-9811224



Thursday, July 30, 1998, 1:00 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Audiology Scope of Practice Committee

AGENDA:

The committee will meet to discuss and possibly act on: drafting of rules (22 TAC, Chapter 741) or board policy, if required, concerning (sale of hearing instruments by mail; misleading representation when licensed audiologist is not readily available to assist clients whether the term "audiology" is protected, (could a business use the term in their name) if no audiologists is employed; use of assistive listening devices and support group for hearing impaired; use of testimonials in advertising; policy of 30-days refund upon the return of a hearing instrument; and testing ambient noise levels outside an enclosure); and other business not requiring action.

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: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, 512/834-6627.

Filed: July 16, 1998, 11:10 a.m.

TRD-9811225



Thursday, July 30, 1998, 3:00 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The board will meet to discuss and possibly act on: proposed rules (22 TAC, Chapter 741), concerning (definitions; code of ethics; renewal procedure, including late and requested inactive status; continuing professional education; schedule of sanction; 30-day trial period upon the return of a hearing instrument; and schedule of fees); review of agency rules to comply with Rider 167, General Appropriations Act; and other business not requiring action.

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: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, 512/834-6627.

Filed: July 16, 1998, 11:11 a.m.

TRD-9811226



Friday, July 31, 1998, 9:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Regular Board

AGENDA:

The board will meet to discuss and possibly act on: review and approval of the minutes of (complaints committee meeting held April 16, 1998, Speech-Language Pathology Scope of Practice Committee meeting held April 16, 1998: Audiology Scope of Practice Committee meeting held April 16, 1998; and Regular Board meetings held April 16, 1998, and April 17, 1998); committee reports to include

final action on any item, rule changes to 22 TAC Chapter 741, or adoption as board policies or guidelines (complaints (information and action taken at the July 30, 1998, meeting relating to (complaint numbers 98-SA-0001; 98-SA-0004; 98-SA-0009; 98-SA-0013 — 98-SA-0016); probation of C.T.; settlement offer of D.L.; application of J.H.; misrepresenting credentials (if degree is from accredited university and in a non-related profession); and guidelines for the schedule of sanctions); Speech-Language Pathology Scope of Practice (information and action taken at the July 30, 1998, meeting relating to (development of guidelines for caseload limits; and supervision of assistants and delegation of duties, including a draft sample form, and use of testimonials in advertising); and Audiology Scope of Practice (information and action taken at the July 30, 1998, meeting relating to (sale of hearing instruments by mail; misleading representation when licensed audiologist is not readily available to assist clients and whether the term "audiology" is protected, (could a business use the term in their name) if no audiologists is employed; use of assistive listening devised and support groups for hearing impaired; use of testimonials in advertising; policy on 30-day refund upon the return of a hearing instrument; and testing ambient noise levels outside and enclosure)); fees/budget (ratify chair's decision to maintain membership to council on licensure, enforcement and regulation (CLEAR); travel expenditures to National Council of State Boards of Examiners in Speech-Language Pathology and Audiology and CLEAR annual conventions; and annual expenditures and budget for upcoming fiscal year); public relations (1998 election ballot for president-elect and board of directors to National Council of State Boards of Examiners for Speech-Language Pathology and Audiology); order related to the proposed suspension of B.B.; division director's report; chairperson's report; executive secretary's report; public comments; other business not requiring action; items for future consideration; election of board officers; and setting 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: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, 512/834-6627.

Filed: July 16, 1998, 11:11 a.m.

TRD-9811227



**Spindletop 2001 Commission**

Friday, July 24, 1998, 11:00 a.m.

855 Florida Street, Lamar University, John Gray Center Building B, Suite 103

Beaumont

Commission

AGENDA:

Physical Inspection of New Offices 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; Board Action on Recommendation from Executive Committee:

Criteria for Logo Use and Response to Request; Preparing Official Calendar of Events; Appointing Committee Chairmen

Discuss plan for:

Historical/Educational Forums; Possible Adoption of a "Mission Statement"; Interviews with Public Officials, Chambers of Commerce and Civil Organizations; Future Approaches to Achieve Centennial Success.

Contact: Evelyn M. Loyd, 855 Florida Street, Lamar University, John Gray Center Building B, Suite 103, Beaumont, Texas 77705, 409/866-7179.

Filed: July 16, 1998, 1:00 p.m.

TRD-9811236



## Teacher Retirement System of Texas

Thursday, July 23, 1998, 3:00 p.m.

1000 Red River, Room 229E

Austin

Board of Trustees Budget Committee

AGENDA:

1. Approval of minutes of May 22, 1998, meeting
2. Consideration of TRS-Mr. Jung
  - a. Resolution for 1997-1998 Budge allowing transfer for BeST, Year 2000 and/or Backfile
  - b. TRS Administrative budget including General Provisions
  - c. TRS Soft Dollar Budget
  - d. BeST Project Budget
  - e. Year 2000 Project Budget
  - f. Imaging Backfile Conversion Project Budget
  - g. TRS-Care Budgets, Active and Retired

For ADA assistance, contact John R. Mercer 512/397-6444 or 1/800/841-4497 at least two days prior tot he meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, 512/397-6400

Filed: July 15, 1998, 3:40 p.m.

TRD-9811181



Thursday, July 23, 1998, 4:00 p.m.

1000 Red River, Room 229E

Austin

Board of Trustees Audit Committee

AGENDA:

1. Approval of minutes of May 21, 1998 Audit Committee Meeting-Mr. Cummings
2. Consideration of the Process to Select a Director of Internal Audit-Mr. Cummings
3. Consideration of Appointment of Interim Director of Internal Audit and Setting of Compensation-Mr. Cummings

For ADA assistance, contact John R. Mercer 512/397-6444 or 1/800/841-4497 at least two days prior tot he meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, 512/397-6400

Filed: July 15, 1998, 3:40 p.m.

TRD-9811182



Thursday, July 23, 1998, 4:00 p.m.

1000 Red River, Room 514E

Austin

Board of Trustees Policy Committee

AGENDA:

1. Approval of minutes of May 21, 1998 meeting
2. Consideration of Plan for Review of Agency Rules pursuant to Article IX, Section 167 of the Appropriations Act
3. Consideration of TRS-Care Enrollment Waiver Permitted by Rule 41.13(b)(1)
4. Consideration of Emergency Rule and a Permanent Rule repealing Section 41.13(d) which Restricts the Enrollment in TRS-Care of a District
5. Presentation on a Comparison of Directed Brokerage Program, Soft Dollars, and Hard Dollars-Mr. Walker

For ADA assistance, contact John R. Mercer 512/397-6444 or 1/800/841-4497 at least two days prior tot he meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, 512/397-6400

Filed: July 15, 1998, 3:39 p.m.

TRD-9811180



Friday, July 24, 1998, 8:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of minutes of May 22 and June 22, 1998, meetings
2. Consideration of Sale of Assets of TRST El Paso, Inc. (Bassett Center, a Regional Mall in El Paso, Texas)
3. Update on San Jacinto Tower Loan
4. Update on Portfolio, including Mortgage Risk Ratings and Issues Affecting Corporate-Owned Properties
5. Consideration of Selection and Engagement of Strategic Real Estate Consultant.
6. Consideration of Performance of Real Estate Commission and Renewal of Engagement

For ADA assistance, contact John R. Mercer 512/397-6444 or 1/800/841-4497 at least two days prior tot he meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, 512/397-6400

Filed: July 16, 1998, 1:02 p.m.

TRD-9811239



Friday, July 24, 1998, 9:00 a.m.

1000 Red River, Fifth Floor Board Room  
Austin  
Board of Trustees

AGENDA:

1. roll call of board members
2. public comment
3. approval of minutes of May 22, 1998, meeting
4. presentation on the Texas Growth Fund-Mr. Kozlowski
5. report of Policy Committee-Dr. Stream
6. Report of the Audit Committee-Mr. Cummings
7. Report of the Budget Committee-Dr. Moreno
8. Certification to State Comptroller of Estimate of State Contributions to the Pension Trust Fund for the 2000-2001 Biennium-Mr. Jung
9. Certification to the Legislative Budget Board and the Governor's Office of Estimate of State Contributions for the Public School Employees Group Insurance fund for the 2000-2001 Biennium-Mr. Jung
10. Certification to the State Comptroller of Estimate of State Contributions to be Received by the Public School Employees Group Insurance fund for the Fiscal Year Ending 8/31/99-Mr. Jung
11. Consideration of Legislative Appropriations Request for 2000-2001 Biennium-Mr. Jung
12. Report of Chief Financial Officer-Mr. Jung
13. Technology Report-Mrs. Morgan and Mrs. George
14. Consideration of Renewal of Contracts with Investment Advisors John Peavy and Craig Hester
15. Report of Executive Director-Mr. Dunlap
16. Comments by Board Members
17. Consideration of Report of General on Litigation-Mr. Baker

For ADA assistance, contact John R. Mercer 512/397-6444 or 1/800/841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, 512/397-6400

Filed: July 16, 1998, 1:08 p.m.

TRD-9811240



## Texas A&M University System, Board of Regents System

Tuesday, July 21, 1998, 2:00 p.m.

711 Louisiana Street, Suite 1300

Houston

Committee on Audit

AGENDA:

The purpose of the meeting is to discuss the internal audit function of the Texas A&M University System and other similar institutions of higher education and take any action the committee deems necessary and appropriate.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 2:12 p.m.

TRD-9811306



Wednesday, July 23, 1998, 9:00 a.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Board of Regents

AGENDA:

Bond issues; delegations: gifts, grants, loan and bequests; appropriations and allocations of funds; endowments; equip purchases; land acquisitions and leases; policies; name facilities; construction projects; select A&Es resolutions; Est law enforce agency; centers; holiday schedules; tenure; special titles; appts, promotions and dismissals; agreement and addendum/TAMRF; dev leave; appoint vice presidents and deans; hon degrees; minutes; reports; closed session disc: consult system attys/litigation and matters rec as atty-client confidential and privileged; matters involving appt, employ, eval, reassign, duties, discipline or dismissal or hear complaints or changes against officers or employee including appt of vice president and dean; any and all things leading to appt of a director of TAEX; search for chancellor; closed session conferences with system employees to receive information including staff report on the affiliation with the south Texas College of Law

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 3:37 p.m.

TRD-9811320



Wednesday, July 23, 1998, 9:30 a.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Committee on Finance

AGENDA:

Consider and vote on authorization of system revenue PUF bonds and appoint senior managing underwriter; TAMUS; delegate invest authority, TAMUS; gifts, grants, loans and bequests, TAMUS; appropriations by chancellor, TAMUS; appropriations from special mineral fund to TAMUS-BCD; quasi-endowment, TAMU; purchase equipment through revenue financing system debt proceeds and appropriations from revenue financing system debt authorization reserve account, TAMU; allocate funds to establish 42 new quasi-endowed accounts, TAMU; appropriation from revenue financing system debt proceeds to purchase food service equipment, TAMU-CC; update on permanent university fund; update on formula funding.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 3:37 p.m.

TRD-9811324

Wednesday, July 23, 1998, 10:30 a.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station



Committee on Audit

AGENDA:

Year 2000 Compliance Report

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 3:37 p.m.

TRD-9811323



Wednesday, July 23, 1998, 11:00 a.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Committee on Buildings and Physical Plant

AGENDA:

Consider and vote on: accept gift of land, Harris Co., TAMUS; accept gift of land and approve long-term lease, Erath Co., TAMUS; lease space/Prime Bank Plaza Building, Spring, Texas, TAMUS; amend advertising policy/construction projects; TAMUS; name facilities ; approve POR, appropriation for design and select A/E design team/ electrical distr system upgrade, TAMU; approve POR and appropriation for design/Evans Libr Renovation, TAMU; approve POR, appropriation for design and select A/E design team/turbomachinery office building, TEES; approve prelim design and appropriation for detailed design/Sbisa Hall Renovations, TAMU; discussion regarding deferred maintenance; reports on system construction projects.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 3:37 p.m.

TRD-9811322



Wednesday, July 23, 1998, 1:30 a.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Committee on Academic and Student Affairs

AGENDA:

Consider and vote on: resolution encouraging universities of TAMUS to develop programs within the TDPRS PAL framework; establish law enforcement agency for TAMU-Texarkana; adopt joint resolution commemorating the 50th anniversary of the cooperative agreement between the Texas Transportation Institute and the Texas Department of Transportation; approve concept of commercial space center for engineering, TEES; report on the future of distance learning in TAMUS; briefing on activities of the Texas Forest Service.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 3:37 p.m.

TRD-9811321



Thursday, July 24, 1998, 8:00 a.m.

Board of Regents Meeting Room, MSC Annex, Clark Street, Texas A&M University

College Station

Board of Regents

AGENDA:

Consider any and all things leading to the appointments of the president of Texas A&M University-Commerce, the president of the Texas A&M University System Health Science Center, and the President of Texas A&M University-Kingsville. Interview candidates for the positions of president of Texas A&M University-Commerce, president of the Texas A&M University System Health Science Center, and president of Texas A&M University-Kingsville, (These matters will be considered in closed session).

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: July 17, 1998, 3:36 p.m.

TRD-9811319



**Texas State Technical College System**

Friday, July 31, 1998, 7:00 a.m.

2400 East End Boulevard, Room 241

Marshall

Board of Regents Audit Committee

AGENDA:

The Committee will meet and discuss the following agenda items: status of audit schedule, reports of audits completed in May 1998, and reports of audits completed in June 1998.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: July 21, 1998, 5:01 p.m.

TRD-9811527



Friday, July 31, 1998, 8:00 a.m.

2400 East End Boulevard, Room 241

Marshall

Board of Regents

AGENDA:

Discussion and review of the following TSTC Policy Committee Minute Order and Reports: Committee of the Whole; Policy Committee for Instruction and Student Services; Policy Committee for Fiscal Affairs; Policy Committee for Facilities; Policy Committee for Human Resources and Development and Reconvene Committee of the Whole.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: July 21, 1998, 4:58 p.m.

TRD-9811525



Friday, July 31, 1998, 1:00 p.m.

2400 East End Boulevard, Room 241

Marshall

Board of Regents

AGENDA:

The Board of Regents will meet in regular session to take action on Ratification of Executive Committee Action, Submission of SCATE II Discovery Grant Proposal to the Telecommunications Infrastructure Fund Board by TSTC Sweetwater; Contract with Fine Host Corp. at TSTC Waco; Acceptance of the Amarillo Abatement and Demolition Project; Application to the THECB Authorizing Construction and Acceptance of the Science and Technology Bldg. at TSTC Harlingen; Award of Contract for Construction of the Child Care Center and Construction of the Autobody Building at TSTC Harlingen; Authorization to Submit a Grant Application to the EDA for the Construction of a Semiconductor Building at TSTC Harlingen; Classes meeting with Less than Ten Students; Establishment of the Industrial Maintenance Mechanics Certificate Option at TSTC Sweetwater; System Operating Standard on Criteria for Scholastic Honors; Signature Authorizations, Schedule of Family and single Student Housing Rental Rates, Service Charges, and Deposits for Fiscal Year 1999; Lease Agreement with Matagorda County Navigation District #1 and TSTC Waco; Sale of Surplus Property at TSTC ETC Marshall and, TSTC Sweetwater; Schedule for Dental Clinic Fees at TSTC Harlingen; Approval for Airport Improvement Project at TSTC Waco; Employee Holiday Schedule for Fiscal Year 1999; Resolution of Appreciation for Frederick Voda; Rescind Minute orders; Audit Plan for Fiscal Year 1999; Request for Budget change for FY 1998; Acceptance of Bids and Award of Contract for Replacement of HVAC Units at TSTC Waco; Concept of Distance Learning Center and Authorization for Preliminary Design Work at TSTC Sweetwater; Annual Operating Plan for TSTC Foundation for FY 1998-1999, Annual Operating Plan for Rolling Plains Technical Foundation at TSTC Sweetwater; Approval to Submit the appropriations Request for FY 2000 and FY 2001; and Change Order to Computer Applications Center at TSTC Waco.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.  
Filed: July 21, 1998, 4:57 p.m.

TRD-9811524



Friday, July 31, 1998, 1:15 p.m.

2400 East End Boulevard, Room 241

Marshall

Board of Regents Audit Committee

AGENDA:

Closed meeting for the specific purpose provided in Sections 551.071, 551.072, 551.074 and 551.075 of Chapter 551 of the Texas Government Code to include the following: A Lynn Mitchell vs TSTC, Civil Action; Possible Sale or Lease of TSTC Rental Property in Amarillo.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.  
Filed: July 21, 1998, 4:59 p.m.

TRD-9811526



## Texas Department of Transportation

Tuesday, July 28, 1998, 9:30 a.m.

125 East 11th Street, First Floor, Hearing Room

Austin

Board of Director of the Texas Turnpike Authority Division

AGENDA:

Approval of minutes. introduction of interim director. reports and discussions; presentation by Bouygues and/or Colas regarding private involvement in turnpike and toll road projects; California trip; status of possible board meeting in San Antonio; status of search for permanent director. Report on general consulting contract with Turner Collie & Braden, Inc., for SH 45/Loop 1/US 183A projects. Authorization for interim director to negotiate with URS Greiner for continuation of SH 130-related work initially undertaken on behalf of the Texas Department of Transportation. Executive session for legal counsel consultation, personnel matters and discussion of land acquisition matters. Rulemaking: 43 TAC chapters 54 and 50. Authorize interim director to prepare and issue request for qualifications for a general consulting civil engineer for State Highway 130. Authorize interim director to prepare and issue a request for qualifications for bonds counsel. Consider appointment of Board members to Financial Advisor Selection Committee and receive report on status of insurance of request for proposal. Open comment period.

Contact: Stacey Benningfield, 125 East 11th Street, Austin, Texas 78701, 512/936-0983.

Filed: July 17, 1998, 2:35 p.m.

TRD-9811315



Tuesday, July 28, 1998, 9:30 a.m.

125 East 11th Street, First Floor, Hearing Room

Austin

Board of Director of the Texas Turnpike Authority Division

REVISED AGENDA:

Approval of minutes. introduction of interim director. reports and discussions; presentation by Bouygues and/or Colas regarding private involvement in turnpike and toll road projects; California trip; status of possible board meeting in San Antonio; status of search for permanent director. Report on general consulting contract with Turner Collie & Braden, Inc., for SH 45/Loop 1/US 183A projects. Authorization for interim director to negotiate with URS Greiner for continuation of SH 130-related work initially undertaken on behalf of the Texas Department of Transportation. Executive session for legal counsel consultation, personnel matters and discussion of land acquisition matters. Rulemaking: 43 TAC chapters 54 and 50. Authorize interim director to prepare and issue request for qualifications for a general consulting civil engineer for State Highway 130. Authorize interim director to prepare and issue a request for qualifications for bonds counsel. Consider appointment of Board members to Financial Advisor Selection Committee and receive report on status of insurance of request for proposal. Open comment period.

Contact: Stacey Benningfield, 125 East 11th Street, Austin, Texas 78701, 512/936-0983.

Filed: July 20, 1998, 4:08 p.m.

TRD-9811454



Monday, August 17, 1998, 9:30 a.m.

200 East Riverside Drive, Room 101

Austin

Household Goods Carrier Advisory Committee

AGENDA:

Convene, review and approval of minutes from June 15 and August 3, 1998, meeting. Discussion and recommendations for modernizing and streamlining department rules adopted under Transportation Code, Chapter 643, Subchapter D as amended by House Bill 1418, 75th Legislature, 1997. Agenda and date of next meeting. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: July 16, 1998, 4:14 p.m.

TRD-9811264



Friday, August 21, 1998, 9:00 a.m.

Laredo International Airport, Director's Conference Room, Airport Terminal

Laredo

Aviation Advisory Committee

AGENDA:

Convene. Approval of minutes of the June 4, 1998 meeting. Review and comment of the draft aviation facility grant program projects for financial assistance. review and comment of the draft three-year capital improvement program for fiscal year 1999-2001. Report on Commissioner Robert L. Nichols' visit. Report on Regional Air Service Task Force meetings. Briefing on WASHTO Conference. Briefing on State funding issues. Briefing on federal legislation. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: July 22, 1998, 11:54 a.m.

TRD-9811587



**The University of Texas Health Center at Tyler**

Thursday, August 6, 1998, Noon

Highway 271 and Highway 155, Room 116, Biomedical Research Building

Tyler

Animal Research Committee

AGENDA:

Approval of minutes; chairman report; veterinarian report; old business; new business and adjournment

Contact: Lea Alegre, P.O. Box 2003, Tyler, Texas 75710, 903/877-7661.

Filed: July 21, 1998, 3:20 p.m.

TRD-9811510



**University of Texas System**

Tuesday, July 21, 1998, 9:00 a.m.

1515 Holcombe Boulevard, Room B8.4344

Houston

UT. M.D. Anderson Cancer Center, Institutional Animal Care and Use Committee

AGENDA:

Review of Protocols for Animal Care and Use and Modifications thereof.

Contact: Anthony Mastromarino, Ph.D, 1515 Holcombe Boulevard, Houston, Texas 77030, 713/792-3220.

Filed: July 16, 1998, 11:58 a.m.

TRD-9811234



Wednesday, July 22, 1998, 9:00 a.m.

Regents' Conference Room, 9th Floor, Ashbel Smith Hall, 201 West 7th Street

Austin

Board of Regents' business Affairs and Audit Committee

AGENDA:

The Business Affairs and audit committee will meet in Open Session to consider status of several ongoing projects, corporate credit card program, revenue bonds, financing for equipment projects for FY 99, financing involving interest rate swap, dealer for revenue system commercial paper, utility deregulation, Year 2000 project, compliance project, HUB program update, report on unclaimed property, Docket improvement, and U.T. M.D. Anderson Cancer Center-institutional compliance.

Contact: Francie A. Frederick, 201 West Seventh Street, Austin, Texas 78701-2981, 512/499-4402.

Filed: July 17, 1998, 11:30 a.m.

TRD-9811285



**Texas Workers' Compensation Insurance Fund**

Tuesday, July 28, 1998, 8:00 p.m.

Four Seasons, 98 San Jacinto, Plaza Suite 716

Austin

Board of Directors

AGENDA:

The Board of Directors will have an informal dinner at 8:00 p.m. on Tuesday, July 28, 1998. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meeting Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund, and certain staff of the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, 512/404-7142.

Filed: July 20, 1998, 10:48 a.m.

TRD-9811398



Wednesday, July 29, 1998, 1:00 p.m.

221 West 6th Street, Suite 328

Austin

Board of Directors

AGENDA:

Call to order; roll call; review and approval of the minutes of the May 27, 1998, board meeting; action items; consideration of proposed revised employee handbook; financial report; status report; informational items; report of the administration committee; report of the audit committee; report of the finance committee; report of the operations committee; public participation; executive session; action items resulting from executive session deliberations; announcements; adjourn.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, 512/404-7142.

Filed: July 21, 1998, 2:07 p.m.

TRD-9811504



## Texas Workforce Commission

Wednesday, July 29, 1998, 2:00 p.m.

Room 644, TWC Building, 101 East 15th Street,

Austin

AGENDA:

Approval of prior meeting notes: vote on minutes dated June 16, 1998 and June 23, 1998; public comment; discussion and consideration and possible action: (1) on acceptance of donations of Child Care Matching Funds; (2) on the allocation of Block Grant Funding to Local Workforce Development Areas, for state fiscal year 1999, including Job Training Partnership Act (JTPA), temporary assistance to needy family (TANF), employment services (ES), food stamp, employment training (FS E&T), and child care funding; (3) regarding potential and pending application or certification and recommendations to the Governor of Local Workforce Development Board for Certification; (4) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Boards; and (5) 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 service and function relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; staff report and discussion-update on activities relating to: administrative support division, technology and facilities management division, unemployment insurance and regulation division, Workforce Development Division, and Welfare Reform Initiatives 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 AFL-CIO v. TWC; Pat McCowan, Betty McCoy, Ed Carpenter, and Lydia DeLeon Individually and on Behalf of other similarly situated v. TWC et al; TSEU/CWA Local 6186, AFL-CIO v. TWC; 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 30.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: July 21, 1998, 3:36 p.m.

TRD-9811514



## Regional Meetings

Meetings filed July 15, 1998

Atascosa County Appraisal District, Appraisal Review Board met at 4th and Avenue J, Poteet, July 20, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, 830/742-3591. TRD-9811175.

Atascosa County Appraisal District, Appraisal Review Board met at 4th and Avenue J, Poteet, July 22, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, 830/742-3591. TRD-9811176.

Atascosa County Appraisal District, Appraisal Review Board met at 4th and Avenue J, Poteet, July 24, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, 830/742-3591. TRD-9811177.

Bandera County Appraisal District, Board of Directors met in a revised agenda at the Bandera County Appraisal District, 1206 Main Street, Bandera, July 21, 1998, at 7:00 p.m. Information may be obtained from P.H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, 830/796-3039. TRD-9811151.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors met at 226 Hwy 132, Natalia, July 20, 1998, at 7:30 a.m. Information may be obtained from John W. Ward, III, 226 Hwy 132, Natalia, Texas 78059, 830/665-2132. TRD-9811159.

Bosque County Central Appraisal District, Board of Directors met at 202 South Hwy 6, Meridian, July 23, 1998, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, 254/435-2304. TRD-9811162.

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Hwy 6, Meridian, July 24, 1998, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, 254/435-2304. TRD-9811163.

Cass County Appraisal District, Board of Director met at 502 North Main Street, Linden, July 21, 1998, at 7:00 p.m. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, 903/756-7545. TRD-9811156.

Central Counties Center for MHMR Services, Board of Trustees met at 304 South 22nd Street, Temple, July 23, 1998, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, 254/298-7010. TRD-9811184.

Coastal Bend Council of Governments, Membership met at 2910 Leopard Street, Corpus Christi, July 24, 1998, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, 512/883-5743. TRD-9811161.

Erath County Appraisal District, Appraisal Review Board met and will meet at 1390 Harbin Drive, Stephenville, July 29, 1998, at 9:00 a.m. and August 4, 1998, at 9:00 a.m. Information may be obtained from Lisa Chick, 1390 Harbin Drive, Stephenville, Texas 76401, 254/965-5434. TRD-9811173.

Fisher County Appraisal District, Fisher CAD ARB Board met at the Fisher County Courthouse/Court Room, 101 Concho Street, Roby, July 17, 1998, at 9:00 a.m. Information may be obtained from Betty Mize, Fisher CAD, Roby, Texas 79543, 915/776-2733. TRD-9811202.

Lower Rio Grande Development Council, Board of Directors Mtg met at the Harlingen, Chamber of Commerce, 311 East Tyler, Harlingen, July 23, 1998, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 311 North 15th Street, McAllen, Texas 78501-4705, 956/682-3481. TRD-9811165.

Lower Rio Grande valley Development Council, Region M Rio Grande Regional Water Planning Group met at the McAllen Miller International Airport/East Conference Room, 2600 South Main, McAllen, July 22, 1998, at Noon. Information may be obtained from Kenneth N. Jones, Jr., 311 North 15th Street, McAllen, Texas 78501-4705, 956/682-3481 or fax 956/631-4670. TRD-9811154.

Nueces River Authority, board of Directors met at the Plaza San Antonio Hotel, 555 South Alamo Street, San Antonio, July 23, 1998, at 10:00 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802-0349, 830/278-6810. TRD-9811153.

Panhandle Regional Planning Commission, Board of Directors met at 415 West 8th Avenue, Amarillo, July 23, 1998, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, 806/372-3381. TRD-9811178.

San Jacinto River Authority, Board of Directors met at 2301 North Millbend Drive, Woodlands, July 23, 1998, at 7:30 a.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, 409/588-1111. TRD-9811164.

West Central Texas Council of Governments, Executive Committee met at 1025 EN 10th Street, Abilene, July 22, 1998, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, 915/6972-8544. TRD-9811160.

West Central Texas Council of Governments met at 1025 EN 10th Street, Abilene, July 23, 1998, at 10:00 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, 915/6972-8544. TRD-9811174.

Meetings file July 16, 1998

Central Plains Center for MHMR & SA, Board of Trustees met at 208 South Columbia, Plainview, July 23, 1998, at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, 806/293-2636. TRD-9811228.

Central Counties Center for MHMR Services, Board of Trustees met in a revised agenda at 304 South 22nd Street, Temple, July 23, 1998, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, 254/298-7010. TRD-9811212.

Central Texas MHMR Center, Board of Trustees met at 408 Mulberry, Brownwood, July 20, 1998, at 5:00 p.m. Information may be obtained from David Williams, P.O. Box 250, Brownwood, Texas 76801, 915/646-9574. TRD-9811231.

Coastal Bend Council of Governments, Membership met at 2910 Leopard Street, Corpus Christi, July 24, 1998, at 2:00 p.m. Informa-

tion may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, 512/883-5743. TRD-9811221.

Comal Appraisal District, Board of Directors met at 178 East Mill Street, #102, New Braunfels, August 3, 1998, at 5:30 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, 830/625-8597. TRD-9811208.

Coryell County Appraisal District, Appraisal Review Board met at 107 North 7th Street, Gatesville, July 22, 1998, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, 254/865-6593. TRD-9811251.

Education Service Center, Region XI, Board of Directors met at 3001 North Freeway, Fort Worth, July 27, 1998, at 10:00 a.m. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, 817/625-5311. TRD-9811249.

Garza Central Appraisal District, Board of Directors met at 124 East Main, Post, July 22, 1998, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, 806/495-3518. TRD-9811243.

Garza Central Appraisal District, Board of Directors met at 124 East Main, Post, July 22, 1998, at 9:30 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, 806/495-3518. TRD-9811242.

Hamilton County Appraisal District, Board met at 119 East Henry, Hamilton, July 21, 1998, at 5:00 p.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, 254/386-8945. TRD-9811230.

Jack County Appraisal District met at 210 North Church Street, Jacksboro, July 21, 1998, at 7:00 p.m. Information may be obtained from Gary L. Zeitler or Tammie Morgan, P.O. Box 958, Jacksboro, Texas 76458, 940/567-6301. TRD-9811217.

Kleberg-Kenedy Soil and Water Conservation District #356, Board of Directors met at 1017 South 14th Street, Kingsville, July 20, 1998, at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 920 East Caesar, Suite #4, Kingsville, Texas 78363, 512/592-0309. TRD-9811210.

Lavaca Regional Water Planning Group, Region P, Executive Committee met at 4631 FM 3131, Edna, July 20, 1998, at 9:00 a.m. Information may be obtained from Emmett Gloyna, 4631 FM 3131, Edna, Texas 512/782-5229. TRD-9811252.

Lee County Appraisal District, Appraisal Review Board met at 218 East Richmond Street, Giddings, July 23, 1998, at 9:00 a.m. Information may be obtained from Lynette Jatzlau, 218 East Richmond Street, Giddings, Texas 78942, 409/542-9618. TRD-9811237.

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, Jr., P.O. Box 5117, Beaumont, Texas 77726-5117, 409/892-4011. TRD-9811265.

North Central Texas Council of Governments, Executive Board met at the Centerpoint Two, 616 Six Flags Drive, 2nd Floor, Arlington, July 23, 1998, at 12:45 p.m. Information may be obtained from Kristy Libotte Keener, P.O. Box 5888, Arlington, Texas 76005-5888, 817/640-3300. TRD-9811229.

Nueces Soil and Water Conservation District met at 548 South Highway 77, Suite B, Robstown, July 2, 1998, at 10:30 a.m. Information may be obtained from Joan D. Rumfield, 546 South

Highway 77, Suite B, Robstown, Texas 78380, 512/387-4116. TRD-9811218.

Panhandle Regional Planning Commission, Board of Directors met at 415 West 8th Avenue, Amarillo, July 23, 1998, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, 806/372-3381. TRD-9811250.

Rio Grande Council of Governments, Board of Directors' met 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-9811220.

Sabine River Authority, Board met at 15777 North Highway 87, Orange, July 24, 1998, at 9:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, 409/746-3200. TRD-9811238.

Sabine Valley Center, Care and Treatment Committee met at 107 Woodbine, Longview, July 23, 1998, at 6:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9811206.

Sabine Valley Center, Finance Committee, met at 107 Woodbine, Longview, July 23, 1998, at 6:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9811205.

Sabine Valley Center, Personnel Committee met at 107 Woodbine, Longview, July 23, 1998, at 6:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9811207.

Sabine Valley Center, Board of Trustees met at 107 Woodbine, Longview, July 23, 1998, at 7:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9811204.

Sabine Valley Center, Board of Trustees met in a revised agenda at 107 Woodbine, Longview, July 23, 1998, at 7:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9811216.

Tarrant Appraisal District, Board of Directors met at 2301 Gravel Road, Fort Worth, July 24, 1998, at 9:00 a.m. Information may be obtained from Marty McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, 817/284-0024. TRD-9811261.

West Central Texas Council of Governments, Regional Citizens Advisory Council, met at 1025 EN 10th Street, Abilene, July 23, 1998 at 10:00 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 675-5214. TRD-9811262.

Meetings filed on July 17, 1998

Alamo Area Council of Governments, Management Committee met at 118 Broadway Suite 400, San Antonio, July 22, 1998, at 10:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broad Suite 400, San Antonio, Texas 78205, 210/362-5200. TRD-9811304.

Alamo Area Council of Governments, Legislative Committee met at 118 Broadway Suite 400, San Antonio, July 22, 1998, at 11:30 a.m. Information may be obtained from Al J. Notzon, III, 118 Broad Suite 400, San Antonio, Texas 78205, 210/362-5200. TRD-9811305.

Brazos River Authority, Board of Directors met at 4499 Cobbs Drive, Waco, July 27, 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-9811282.

Central Texas Council of Governments, Executive Committee met at 302 East Central Avenue, Belton, July 23, 1998, at 11:30 a.m. Information may be obtained from A.C. Johnson, 302 East Central Avenue, Belton, Texas 254/939-1801. TRD-9811317.

Comal Appraisal District, Appraisal Review Board met at 178 East Mill Street, #102, New Braunfels, July 21, 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-9811281.

Comal Appraisal District, Appraisal Review Board will meet at 178 East Mill Street, #102, New Braunfels, August 4, 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-9811307.

Dallas Area Rapid Transit, Audit met in Conference Room B, First Floor, 1401 Pacific Avenue, Dallas, July 21, 1998, at 10:30 a.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9811329.

Dallas Area Rapid Transit, Project Management met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, July 21, 1998, at Noon. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9811330.

Dallas Area Rapid Transit, Minority Affairs met in Conference Room B, First Floor, 1401 Pacific Avenue, Dallas, July 21, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9811334.

Dallas Area Rapid Transit, Planning Meeting met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, July 21, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9811331.

Dallas Area Rapid Transit, Committee-of -the-Whole met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, July 21, 1998, at 4:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9811332.

Dallas Area Rapid Transit, Board of Directors met in the Board Room, First Floor, 1401 Pacific Avenue, Dallas, July 21, 1998, at 6:30 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9811333.

Dewitt County Appraisal District, Appraisal Review Board met at 103 Bailey, Cuero, July 22, 1998, at 9:00 a.m. Information may be obtained from Alice Rickman, P.O. Box 4, Cuero, Texas 77954, 512/275-5753. TRD-9811272.

Edwards Aquifer Authority, Aquifer Management Planning Committee 1615 North St. Mary's Street, San Antonio, Texas July 22, 1998, at 1:30 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-9811339.

Evergreen Underground Water Conservation District, met at Board of Directors met at 1306 Brown, Jourdanton, July 23, 1998, at 10:00 a.m. Information may be obtained from Evergreen Underground Water Conservation District, P.O. Box 155, Jourdanton, Texas 78026, 830/769-3740. TRD-9811340.

Harris County Appraisal, Appraisal Review Board met at 2800 North Loop West, Houston, July 24, 1998, at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, 713/957-5222. TRD-9811270.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, July 21, 1998, at 9:00 a.m. Information

may be obtained from Pete Islas, 2100 North IH-35, Kyle, Texas 78640, 512/268-2522. TRD-9811316.

Johnson County Rural Water Supply Corporation, Regular Board met at the Corporate Office, 2849 Highway 171 South, Cleburne, July 21, 1998, at 6:00 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, 817/645-6646. TRD-9811271.

Lubbock Regional MHMR Center, Board of Trustees-Program Committee met at 1602 10th Street, Board Room, Lubbock, July 21, 1998, at 4:00 p.m. Information may be obtained from Tami Swoboda, P.O. Box 2828, Lubbock, Texas 79408, 806/766-0202. TRD-9811327.

Lubbock Regional MHMR Center, Board of Trustees-Resource Committee met at 1602 10th Street, Board Room, Lubbock, July 24, 1998, at 4:00 p.m. Information may be obtained from Tami Swoboda, P.O. Box 2828, Lubbock, Texas 79408, 806/766-0202. TRD-9811328.

Lubbock Regional MHMR Center, Board of Trustees met at 1602 10th Street, Board Room, Lubbock, July 27, 1998, at Noon. Information may be obtained from Tami Swoboda, P.O. Box 2828, Lubbock, Texas 79408, 806/766-0202. TRD-9811326.

Middle Rio Grande Development Council, Texas Review and Comment System Committee met at 209 North Getty Street, Uvalde, July 23, 1998, at 3:00 p.m. Information may be obtained from Tim Trevino, 209 North Getty Street, Uvalde, Texas 78801, 830/278-4151 or fax 830/278-2929. TRD-9811274.

Montague County Tax Appraisal District, Appraisal Review Board met at 312 Rusk Street, Montague, July 20, 1998, at 4:00 p.m. Information may be obtained from June Deaton, 312 Rusk Street, Montague, Texas 76251, 940/894-6011. TRD-9811276.

Tarrant Appraisal District, Board will meet at 2329 Gravel Road, Fort Worth, August 10, 1998, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, 817/284-8884. TRD-9811314.

Uvalde County Appraisal District, Appraisal Review Board met at 209 North High Street, Uvalde, July 21, 1998, at 9:00 a.m. Information may be obtained from Alinda E. Lopez, Uvalde, Texas 78801, 830/278-1106, Ext. 16. TRD-9811267.

Meetings filed July 20, 1998

Austin-Travis County MHMR Center, Community Forum #18 met at 721 Barton Springs Road, Austin, July 23, 1998, at 5:45 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9811456.

Austin-Travis County MHMR Center, Planning and Operations Committee met at 1430 Collier Street, Board Room, Austin, July 24, 1998, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9811457.

Center Texas Workforce Development Board met at 301 West Avenue G, Temple, July 23, 1998, at 10:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 450, Belton, Texas 76513, 254/939-3771. TRD-9811368.

Colorado County Central Appraisal District, Appraisal Review Board met at 400 Spring, Columbus, July 23, 1998, at 3:00 p.m. Information may be obtained from William T. Youens, Jr., 400 Spring, Columbus, Texas 78934, 409/732-8222. TRD-9811366.

Colorado County Central Appraisal District, Appraisal Review Board will meet at 400 Spring, Columbus, August 10, 1998, at 3:00 p.m.

Information may be obtained from William T. Youens, Jr., 400 Spring, Columbus, Texas 78934, 409/732-8222. TRD-9811365.

Eastland County Appraisal District, Board of Directors met at 100 Main, Eastland, July 29, 1998, at 1:00 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, 254/629-8597. TRD-9811390.

Eastland County Appraisal District, Board of Directors met at 100 Main, Eastland, July 30, 1998, at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, 254/629-8597. TRD-9811391.

Ellis County Appraisal District, Appraisal Review Board met at 400 Ferris Avenue, Waxahachie, June 23, 1998, at 10:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75168, 972/937-3552. TRD-9811352.

Falls County Appraisal District, Appraisal Review Board met at the Interstate of Highway 6 & 7, Courthouse-First Floor, Marlin, July 20, 1998, at 11:15 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, 817/883-2543. TRD-9811369.

Hall county Appraisal District, Board of Directors met at 721 Robertson, Memphis, July 23, 1998, at 6:00 p.m. Information may be obtained from Anita Phillips, 721 Robertson, Memphis, Texas 806/259-2393. TRD-8711466.

Hockley County Appraisal District, Appraisal Review Board met at 1103 Houston Street, Levelland, July 24, 1998, at 7:00 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-9811371.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, July 27, 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-9811372.

Lampasas County Appraisal District, Appraisal Review Board met at 109 East 5th Street, Lampasas, July 24, 1998, at 9:00 a.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550-0175, 512/558-8058. TRD-9811354.

Lampasas County Appraisal District, Board of Directors met at 109 East 5th Street, Lampasas, July 24, 1998, at 7:00 p.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550-0175, 512/558-8058. TRD-9811351.

Lee County Appraisal District, Board of Directors met at 218 East Richmond Street, Giddings, June 29, 1998, at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, 409/542-9618. TRD-9811370.

North Central Texas Council of Governments, Marketing Committee met at 616 Six Flags Drive, Suite 200, Arlington, July 23, 1998, at 9:00 a.m. Information may be obtained from Sharon Fletcher, P.O. Box 5888, Arlington, Texas 76005-5888, 817/695-9176. TRD-9811451.

North Central Texas Council of Governments, Program Committee met at 616 Six Flags Drive, Suite 200, Arlington, July 23, 1998, at 9:30 a.m. Information may be obtained from Sharon Fletcher, P.O. Box 5888, Arlington, Texas 76005-5888, 817/695-9176. TRD-9811453.

North Central Texas Council of Governments, Executive Board met in a revised agenda at 616 Six Flags Drive, Suite 200, Arlington, July 23, 1998, at 12:45 p.m. Information may be obtained from

Sharon Fletcher, P.O. Box 5888, Arlington, Texas 76005-5888, 817/695-9176. TRD-9811470.

North Central Texas Council of Governments, Finance Committee met at 616 Six Flags Drive, Suite 200, Arlington, July 24, 1998, at 10:00 a.m. Information may be obtained from Sharon Fletcher, P.O. Box 5888, Arlington, Texas 76005-5888, 817/695-9176. TRD-9811452.

North Texas Tollway Authority, Board of Directors met at Dallas/Fort Worth Airport Marriott, 8440 Freeport Parkway, Irving, July 24, 1998, at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, 214/522-6200. TRD-9811455.

Sabine Valley Center, Board of Trustees met at 107 Woodbine, Longview, July 23, 1998, at 7:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9811396.

San Jacinto River Authority, Region H Water Planning Group met at 3200 College Park Drive, Conroe, July 29, 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-9811394.

Texas Community Center Managed Care, Inc., Board of Directors met at 6000 Middle Fiskville Road, Austin, July 23, 1998, at 10:30 a.m. Information may be obtained from Fred Bradley, 6000 Middle Fiskville Road, Austin, Texas 78752, 512/794-9268. TRD-9811471.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 23, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811353.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 24, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811355.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 27, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811356.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 28, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811357.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 29, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811358.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 30, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811359.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, July 31, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9811360.

Wichita Falls MPO, Policy Advisory Committee met at the City Council Conference Room, Memorial Auditorium, 1300 7th Street, Wichita Falls, July 24, 1998, at 8:30 a.m. Information may be obtained from Richard Luedke, P.O. Box 1431, Wichita Falls, Texas, 76307, 940/761-7447. TRD-9811449.

Meetings filed July 21, 1998

Bell County Tax Appraisal District, Appraisal Review Board met at 411 East Central Avenue, Belton, July 29, 1998, at 8:30 a.m. Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, 254/939-5841. TRD-9811443.

Blanco County Appraisal District, 1998 Appraisal Review Board will meet at 200 North Avenue G, Johnson City, August 17, 1998, at 4:00 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, 830/868-4013. TRD-9811437.

Brazos River Authority, Board of Directors met at 4400 Cobbs Drive, Waco, July 27, 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-9811503.

Central Texas Council of Governments, K-TUTS Transportation Planning Policy Board Annual Meeting met at 445 East Central Texas Expressway, Harker Heights, July 30, 1998, at 9:00 a.m. Information may be obtained from Jim Reed, P.O. Box 729, Belton, Texas 76513, 254/933-7075, Ext. 203. TRD-9811515.

Central Texas Water Supply Corporation, Negotiating Committee met at CTWSC Man office Conference Room, Harker Heights, July 24, 1998, at 9:00 a.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9811435.

Coastal bend Chief Elected Officials Council, CEO Council met at the Council of Governments Office, 2910 Leopard Street, Corpus Christi, July 24, 1998, at 3:00 p.m. Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, 3rd Floor, Corpus Christi, Texas 78401, 512/889-5330, Ext. 107. TRD-9811505.

Cypress Springs Water Supply Corporation, Board of Director met at the Office of Cypress Springs Water Supply Corporation, 4430 Highway 115, South of Mount Vernon, July 30, 1998, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, 903/860-3400. TRD-9811486.

Deep East Texas Local Workforce Development Board met at 300 East Shepherd, Room 202, Lufkin, July 28, 1998, at 12:30 p.m. Information may be obtained from Walter Glenn, P.O. Box 423, Kirbyville, Texas 75956, 409/423-4357. TRD-9811473.

Gulf Bend Center/South Texas Regional Alliance, Regional Advisory Council met at 3200 Surfside, Corpus Christi, July 27, 1998, at 12:30 p.m. Information may be obtained from Maxine Buttler, 4926 Weber, Suite 6, Corpus Christi, Texas 78411, 512/857-8798, Ext. 10. TRD-9811497.

Gulf Bend Center, Board of Trustees met at 1502 East Airline, Victoria, July 28, 1998, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Suite 25, Victoria, Texas 77901, 512/582-2309. TRD-9811520.

Hall County Appraisal District, Board of Directors met at 721 Robertson, Memphis, July 23, 1998, at 6:00 p.m. Information may be obtained from Anita Phillips, 721 Robertson, Memphis, Texas 806/259-2393. TRD-9811438.

Hays County Appraisal District, Board of Directors met at 21001 North IH-35, Kyle, July 27, 1998, at 3:00 p.m. Information may be obtained from Pete T. Islas, 21001 North IH-35, Kyle, Texas 78640, 512/268-2522. TRD-9811500.

Hays County Appraisal District, Board of Directors met at 21001 North IH-35, Kyle, July 27, 1998, at 3:30 p.m. Information may be



obtained from Pete T. Islas, 21001 North IH-35, Kyle, Texas 78640, 512/268-2522. TRD-9811499.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, August 4, 1998, at 10:00 a.m. Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9811436.

Jasper County Appraisal District, Appraisal Review Board met at 137 North Main, Jasper, July 25, 1998, at 9:00 a.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, 409/384-2544. TRD-9811442.

Middle Rio Grande Development Council, Texas Review and Comment System Committee met in a revised agenda at 209 Getty Street, Uvalde, July 23, 1998, at 3:00 p.m. Information may be obtained from Tim Trevino, 209 North Getty Street, Uvalde, Texas 78801, 830/278-4151 or fax 830/278-2929. TRD-9811491.

Northeast Texas Municipal Water District Board of Directors met at Highway 250 South, Hughes Springs, July 27, 1998, at 10:00 a.m. Information may be obtained from Walt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, 903/639-7538. TRD-9811490.

Region D Regional Water Planning Group, North East Texas Regional Water Planning Group met at Titus County Civic Center, Highway 271 South of Interstate 30, Mt. Pleasant, July 29, 1998, at 3:00 p.m. Information may be obtained from Walt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, 903/693-7538. TRD-9811507.

Region F Regional Water Planning Group met at the Chevron USA Inc. Permian Basin Training Center, 4200 North FM 1788, Midland, July 27, 1998, at 10:30 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721-0869, 915/297-6341. TRD-9811517.

San Antonio-Bexar County Metropolitan Planning Organization, Transportation Steering Committee met at the Executive Assembly Center of the Convention Center Complex, Corner of South Alamo and East Market, San Antonio, July 27, 1998 at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, San Antonio, Texas 78205, 210/227-8651. TRD-9811447.

Southwest Milam Water Supply Corporation, Board met at 114 East Cameron, Rockdale, July 27, 1998, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, 512/446-2604. TRD-9811496.

Tarrant Appraisal District, Board of Directors met in a revised agenda at 2301 Gravel Road, Fort Worth, June 24, 1998, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, 817/284-0024. TRD-9811478.

Meetings filed July 22, 1998

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Highway 6, Meridian, July 28, 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-9811558.

Golden Crescent Regional Planning Commission, Board of Directors met at 568 Big Bend Drive, Victoria, July 29, 1998, at 5:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, 512/578-1587. TRD-9811565.

Golden Crescent Regional Planning Commission, Executive Committee met at 568 Big Bend Drive, Victoria, July 29, 1998, at 5:45 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, 512/578-1587. TRD-9811566.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board will meet in a revised agenda at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, August 4, 1998, at 10:00 a.m. Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9811550.

Uvalde County Appraisal District, Board of Directors met at 209 North High Street, Uvalde, July 27, 1998, at 7:30 p.m. Information may be obtained from Alinda E. Lopez, 209 North High Street, Uvalde, Texas 78801, 830/278-1106, Ext. 16. TRD-9811528.



# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Office of the Attorney General

### Notice of Settlement of CERCLA Cost Recovery Claim

Notice is hereby given by the State of Texas of the following proposed resolution of a claim for response costs under the Comprehensive Environmental Response, Compensation, and Liability Act and applicable state law. The State of Texas, on behalf of the Texas Natural Resource Conservation Commission, has reached an agreement with Commercial Metals Company, Duggan Industries, Inc., Exide Corporation, General Motors Corporation, GNB Technologies, Inc., Interstate Battery System of America, Inc., Johnson Controls, Inc., and M. Lipsitz & Co. (the "Settling Defendants") and a number of affiliated entities to resolve the Settling Defendants' liability to the State for response costs incurred by the TNRCC arising from the release and threatened release of hazardous substances from the RSR Superfund Site, Dallas, Dallas County, Texas. The Attorney General will consider any written comments received on the settlement within 30 days of the date of publication of this notice.

Case Title and Court: State of Texas v. Commercial Metals Company, Duggan Industries, Inc., Exide Corporation, General Motors Corporation, GNB Technologies, Inc., Interstate Battery System of America, Inc., Johnson Controls, Inc., and M. Lipsitz & Co., in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3-98CV1259-X.

Background: The RSR Superfund Site is an approximately 13.6 square mile area located in West Dallas, Dallas County, Texas. Prior to approximately 1986, the Settling Defendants and over 775 other generators sold junk batteries and other scrap metals to the owners and operators of a secondary lead smelter located near the center of the RSR Superfund Site for the purpose of extracting the lead battery components as a source of lead in the secondary smelting process. The extraction process and the smelting of lead produced several waste products, including broken battery casings or "chips" and slag from the smelting process. Both wastes were contaminated with hazardous substances. This material was disposed of at various locations within the RSR Superfund Site. The TNRCC undertook limited investigative, removal, and remedial actions at the Site. Any remaining remedial actions will be taken by the EPA, the City of Dallas, and/or the Settling Defendants.

Nature of the Settlement: The TNRCC (formerly, the Texas Water Commission) incurred response costs in connection with investigative,

removal, and remedial activities undertaken at the Site, including sampling; soil removals at least three residences; temporary relocation of three families from their residences during the removal action; surveying over 6,500 residences to assess the presence of lead battery chips; and an assessment and fencing of the three slag sites. The Settling Defendants will make a cash payment to the State to settle their liability to the State for the State's response costs.

Proposed Settlement: The proposed settlement will resolve the Settling Defendants' liability to the State for response costs incurred by the TNRCC at the Site for a cash payment of \$275,000.

For a complete description of the proposed settlement, the complete proposed settlement should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Albert M. Bronson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9811586

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Filed: July 22, 1998

## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of July 14, 1998, through July 21, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Oiltanking Houston, Inc.; Location: Houston Ship Channel, at 15602 Jacintoport Boulevard, in Houston, Harris County, Texas.; Project No.: 98-0320-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Permit No. 19427(02) to include the construction of a finger pier dock, the installation of mooring and breasting dolphins, and the dredging of a mooring basin. In addition, the applicant requests authorization to perform maintenance dredging for a period of 10 years. During the initial dredging of the mooring basin, approximately 1,400,000 cubic yards of material will be hydraulically dredged and approximately 400,000 cubic yards of material will be mechanically dredged. The hydraulically dredged material will be placed in one of more of the Port of Houston's placement areas. The mechanically dredged material will be placed on an upland area located on the applicant's property. The purpose of the proposed project is to construct a new liquid cargo dock facility. A mooring basin must be dredged to provide sufficient docking area for the facility.; Type of Application: U.S.C.O.E. permit application #19427(03) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Exxon Company, U.S.A.; Location: Across a Gulf shipping fairway, in East Breaks Blocks 297, 253 and 254, offshore Texas, in the Gulf of Mexico.; Project No.: 98-0321-F1; Description of Proposed Action: The applicant proposes to install and maintain an 18/20-inch natural gas pipeline, extending from Alaminos Canyon Block 25 to the High Island Block A-573 platform. A portion of this pipeline will cross the Gulf Fairway. Water Depth at the fairway crossing is approximately 1,600 feet. The pipeline will not be buried, but will be laid on the ocean floor across the fairway.; Type of Application: U.S.C.O.E. permit application #21321 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Payco Marina, Inc.; Location: In West Galveston Bay, near the intersection of 89th Street and Interstate 45, at 8821 Broadway, in Galveston, Galveston County, Texas.; Project No.: 98-0322-F1; Description of Proposed Action: The applicant requests an extension of time to complete work previously authorized under Department of the Army Permit 18895(01) and to amend the permit to include new modifications. The applicant proposed to use 5,000 cubic yards of excavated material from maintenance dredging operations to fill 2.87 acres of open water area near the marina entrance to create saltmarsh habitat. The applicant also proposes to remove an existing pile-supported bait house and replace it with a 60-foot-long by 20-foot-wide permanently moored, floating bait barge. Also proposed is the repair of an existing bulkhead located by "J" dock on the west side of the marina. In addition, the applicant plans to add 12 floating docks in the southeast corner of the marina. Moreover, the applicant proposes to construct a 36-inch to 42-inch circulation culvert approximately 200 feet long to connect the sough end of the marina to Offats Bayou.; Type of Application: U.S.C.O.E. permit application #18895(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Neumin Production; Location: Approximately 4 miles north of Oyster Creek, Brazoria County, Texas; Project No.: 98-0323-F1; Description of Proposed Action: The applicant proposes to fill 0.99 acre of wetlands adjacent to Oyster Creek to construct a 0.97 acre well pad including mud pits and a 0.02 acre access road.; Type of Application: U.S.C.O.E. permit application #21339 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: The Nature Conservancy; Location: Adjacent to and on Shamrock Island, Corpus Christi Bay, Nueces County, Texas.; Project No.: 98-0324-F1; Description of Proposed Action: The applicant proposes to construct a near shore breakwater and place

dredged material along the northwest shore of Shamrock Island for shoreline stabilization control.; Type of Application: U.S.C.O.E. permit application #21340 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Port Isabel-San Benito Navigation District; Location: On the west side of the Port Isabel Turning Basin, near Corps of Engineers Station 20+198, in Port Isabel, Cameron County, Texas; Project No.: 98-0325-F1; Description of Proposed Action: The applicant proposes to construct a concrete dock with approach ramps, steel tripod mooring structures, shaping of the shoreline, slope protection and dredging.; Type of Application: U.S.C.O.E. permit application #21225 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: U.S. Department of Energy; Location: West Hackberry Strategic Petroleum Reserve Oil Storage Facility, pipeline segment containing valve stations 7, 8, 9, 10, and 11 along the Sabine River, Cow Bayou, and Neches River in Jefferson and Orange Counties, Texas.; Project No.: 98-0316-F1; Description of Proposed Action: The applicant proposes to perform maintenance on existing permitted Valve Station Pads (Numbers 6, 7, 8, 9, 10, and 11) on the 42-inch crude oil pipeline, West Hackberry Strategic Petroleum Reserve, SWGCO-RP 12342. Type of Application: U.S.C.O.E. permit application under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Hollywood Marine, Inc.; Location: In Old River, at the applicant's existing facility on DeZavalla Road, in Channelview, Harris County, Texas.; Project No.: 98-0335-F1 Description of Proposed Action: The applicant proposes to amend their existing permit to authorize the installation of four 15-pile clusters, within approximately 300 feet of the shoreline. This project is proposed to allow for the safe mooring of vessels docked along the shoreline. The project site is located in a dredged area immediately adjacent to the applicant's commercial facility. The existing permit authorizes the dredging and maintenance of the area (4,500 feet by 250 feet) immediately in front of the applicant's facility to a depth of 12 feet below mean low water until December 31, 2007.; Type of Application: U.S.C.O.E. permit application #20709(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: John C. Echols; Location: On Galveston Bay, at 6502 FM 2354, approximately one mile east of the intersection of FM 1405 and FM 2354, near Baytown, Chambers County, Texas.; Project No.: 98-0336-F1; Description of Proposed Action: The applicant proposes to construct a private pier and T-head for recreational fishing and boating. The pier would be 780 feet long and 7 feet wide to provide wheelchair access. A triangular deck area measuring 35 square feet would be located on one side of the pier approximately 600 feet from the shore. A T-head measuring 20 feet by 40 feet would be constructed at the end of the pier. The entire structure would have a total area of 6,295 square feet. Water depth at the shoreline is 1 foot mean high water (MHW) and would be 4 to 5 feet MHW at the proposed T-head.; Type of Application: U.S.C.O.E. permit application #21312 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403). FEDERAL AGENCY ACTIVITIES: Applicant: Environmental Protection Agency (EPA); Location: Concentrated Animal Feeding Operations (CAFO) in EPA Region 6 States of New Mexico, Oklahoma, and Texas as well as CAFOs on Indian Country Lands in these states.; Project No.: 98-0315-F2; Description of Proposed Activity: Pursuant to the Clean Water Act 402, 33 USC 1342, the applicant proposes to reissue National Pollutant Discharge Elimination System (NPDES) General Permits for (1) watershed-

specific general permits for CAFOs located in watersheds that have been impaired by CAFO-related activities, and (2) general permits for all other CAFOs located in the three States of New Mexico, Oklahoma, and Texas and Indian Country lands in these States. CAFOs are facilities used to confine large numbers of animals, including poultry, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of concentration and confinement. Fields dedicated for disposal, by land application, of waste and wastewater generated at the facility, are also considered to be part of the CAFO. The general permits will apply to all existing CAFOs with coverage under the general permit that expired on March 10, 1998, and new CAFOs. 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-9811571  
Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: July 22, 1998

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## 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, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/27/98 - 08/02/98 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/27/98 - 08/02/98 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 08/01/98 - 08/31/98 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 08/01/98 - 08/31/98 is 10% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-9811480  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: July 21, 1998

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## Texas Credit Union Department

### Application(s) for a Merger or Consolidation

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Simmons Dallas Credit Union (Lake Dallas) seeking approval to merge with Presbyterian Healthcare System Credit Union (Dallas) with the latter being the surviving credit union.

An application was received from Toshiba/Houston Credit Union (Houston) seeking approval to merge with First Community Credit Union (Houston) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9811563  
Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: July 22, 1998

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### Application(s) to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a name change was received for Procter & Gamble/Folger Coffee Texas Employees Credit Union, Dallas, Texas. The proposed new name is Procter & Gamble Texas Employees Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9811570  
Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: July 22, 1998

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### Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Kraft America Credit Union, Garland, Texas to expand its field of membership. The proposal would permit the employees of Denison Industries, Denison, Texas to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would permit

the tenants of Lincoln Place, Tennyson Parkway, Plano, Texas and their employees to be eligible for membership in the credit union.

An application was received from First Energy Credit Union, Houston, Texas to expand its field of membership. The proposal would permit the employees of Browning Ferris Industries, and its wholly owned subsidiaries, who either work in, are paid from, or supervised from Houston, Texas to be eligible for membership in the credit union.

An application was received from Texaco Houston Credit Union, Bellaire, Texas to expand its field of membership. The proposal would permit the employees of the following entities: Equilon Enterprises LLC, Motiva Enterprises LLC, Equiva Services LLC and Equiva Trading Company who are paid from, work in or are supervised from Houston, Texas and subsidiaries, affiliates, alliances and joint ventures of these entities as may from time to time be approved by Board resolution to be eligible for membership in the credit union.

An application was received from Witco Houston Employees Credit Union, Rosenberg, Texas to expand its field of membership. The proposal would permit Witco Corporation employees or employees of subcontractors both of which work at the 15200 Alameda location to be eligible for membership in the credit union.

An application was received from Denton Area Teachers Credit Union, Denton, Texas to expand its field of membership. The proposal would permit the associate members of the Denton County Childrens Advocacy Center (DCCAC) to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9811564  
Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: July 22, 1998



#### Notice of Application(s) Approved

In accordance with the provisions of 7 TAC §91.103, the Texas Credit Union Department provides notice of the approval of the following application(s):

##### Application(s) to Expand Field of Membership:

Kraft America Credit Union, Garland, Texas - See *Texas Register* issue dated May 1, 1998.

Community Service Credit Union, Huntsville, Texas - See *Texas Register* issue dated May 1, 1998.

##### Application(s) for a Merger or Consolidation:

Wichita Falls Telco Federal Credit Union, Wichita Falls, Texas merging with Wichita Falls Postal Credit Union, Wichita Falls, Texas - See *Texas Register* issue dated November 28, 1997.

Victor Employees Credit Union, Denton, Texas merging with Pegasus Credit Union, Dallas, Texas - See *Texas Register* issue dated April 10, 1998.

Local 895 Members Federal Credit Union, Dallas, Texas merging with PIA of Texas Credit Union, Dallas, Texas - See *Texas Register* issue dated May 1, 1998.

##### Application(s) to do Business in Texas:

Anheuser Busch Employees Credit Union, St. Louis, Missouri filed an application on April 2, 1998, to receive authority to do business in Texas. The credit union will operate under the name of Earthgrains Credit Union located at 2020 19th N.W., Paris, Texas 75461.

Baxter Credit Union, Deerfield, Illinois filed an application on April 8, 1998, to receive authority to do business in Texas. The credit union will operate under the name of FirstPlus Credit Union located at 1526 Viceroy Drive, Dallas, Texas 75235.

##### Application(s) to Convert Credit Union Charter:

Baptist Federal Credit Union, San Antonio, Texas filed an application on May 4, 1998 to convert to a state chartered credit union. Upon the effective date of the conversion the credit union will be known as Baptist Credit Union.

Austin Municipal Employees Federal Credit Union, Austin, Texas filed an application on May 4, 1998 to convert to a state chartered credit union. Upon the effective date of the conversion the credit union will be known as Austin Metropolitan Financial Credit Union.

TRD-9811567  
Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: July 22, 1998



## Texas Department of Criminal Justice

### Notice to Bidders

The Texas Department of Criminal Justice invites bids for construction of the High Security Facility at the Gib Lewis Unit in Woodville, Texas. The project consists of new construction of a 660 cell High Security Prototype facility at the existing Lewis Unit. The size of the facility is approximately 145,000 square feet. The work includes civil, architectural, mechanical, electrical, plumbing, security electronics, commissioning, food service, structural concrete and steel, and pre-engineered metal building as further shown on the Contract Documents prepared by Hellmuth, Obata & Kassabaum, Inc. (HOK).

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner.

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$250 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer: HELLMUTH, OBATA & KASSABAUM, INC. (HOK) INC., Attention: David House, 2001 Ross Avenue, Suite 2800, Dallas, Texas 75201; Phone: (214) 720-6000; Fax: (214) 720-6005.

A Pre-Bid conference will be held at 9am on July 21, 1998, at the W.J. Estelle Unit, Huntsville, Texas, followed by a site-visit of this prototype unit. Attendance is mandatory. Bids will be publicly opened and read at 2pm August 12, 1998, in the large conference room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9811350  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: July 20, 1998



#### Notice of Revision

The Texas Department of Criminal Justice Facilities Division (TDCJ-FD) hereby provides notice of revision to the Notice to Bidders for Remodeling the Death House in Huntsville. The Notice to Bidders was published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7282).

The Pre-bid conference date has been changed to August 6, 1998, at 9:00 a.m.

The Bid opening date has been changed to August 18, 1998, at 2:00 p.m.

TRD-9811446  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: July 21, 1998



### Texas Education Agency

#### Notice of Extension of Contract Concerning Master Trust Custodian and Securities Lending Agent Services

The Texas Education Agency (TEA) entered into a contract with Citibank for master trust custodial and securities lending services for the Permanent School Fund for the period September 1, 1995, through August 31, 1997, under Request for Proposals #701-95-029. The contract was extended from August 31, 1997, to August 31, 1998, by action of the State Board of Education (SBOE) on July 11, 1997. The TEA will extend the contract from August 31, 1998, to August 31, 1999, pursuant to action taken by the SBOE on July 10, 1998.

For clarifying information about the extension of the contract for master trust custodial and securities lending services with Citibank,

contact Paul Ballard, Office of the Texas Permanent School Fund, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9169.

TRD-9811574  
Criss Cloudt  
Associate Commissioner, Policy Planning and Research  
Texas Education Agency  
Filed: July 22, 1998



### Advisory Commission on State Emergency Communications (ACSEC)

#### Notice of Proposed 9-1-1 Fees and 9-1-1 Equalization/Poison Control Surcharges and Allocations

Notice is given to the public of the Advisory Commission on State Emergency Communications' proposed rates for the 9-1-1 emergency services fees established pursuant to Texas Health and Safety Code Annotated 771.071 for each of the 24 councils of governments' areas participating in the state 9-1-1 program and of the proposed rates of the 9-1-1 equalization and poison control surcharges on intrastate long distance service established pursuant to Texas Health and Safety Code Annotated 771.072 and the budgeting and allocations of the fees and surcharges to 9-1-1 entities, poison control centers, and telecommunications and operations costs.

For each council of governments' area, the rate of the wireline 9-1-1 emergency service fee is proposed to remain unchanged at \$0.50 per month for each wireline local access line or equivalent local access line as defined in 1 Texas Administrative Code §255.4. This does not include areas for the following counties and cities within councils of governments' areas that are not participating in the state 9-1-1 program. The counties not participating include: Smith, Taylor, Austin, Bexar, Comal, Guadalupe, Brazos, Calhoun, Cameron, Denton, El Paso, Ector, Galveston, Harris, Henderson, Howard, Kerr, Lubbock, McLennan, Medina, Midland, Montgomery, Wichita, Wilbarger, Potter, Randall, Tarrant, Rusk and Harrison. The cities not participating include: Addison, Aransas Pass, Dallas, Plano, Coppell, DeSoto, Ennis, Cedar Hill, Longview, Wylie, Denison, Duncanville, Farmers Branch, Garland, Highland Park, Mesquite, Richardson, Sherman, University Park, Glenn Heights, Hutchins, Lancaster, Portland, Rowlett and Sunnyvale. Wireless 9-1-1 emergency services fees are set at a fixed \$0.50 per month by statute for each wireless telecommunications connection pursuant to Texas Health and Safety Code Annotated 771.0711. The 9-1-1 equalization surcharge is proposed to remain unchanged at 3/10 of one percent of intrastate long distance service pursuant to 1 Texas Administrative Code §255.1. The poison control surcharge is proposed to remain unchanged at 3/10 of one percent of intrastate long distance service pursuant to 1 Texas Administrative Code §255.9.

The proposed budgeting and allocations of the 9-1-1 emergency service fees, the 9-1-1 equalization surcharge, and the poison control surcharge are represented in the charts below. The expenditures outlined for the 9-1-1 program represent the combined funding priorities of regional operations Level I, Level II, and Level III pursuant to 1 Texas Administrative Code §251.6. Included within these levels are the costs for provisioning 9-1-1 emergency services to include equipment, network, database, addressing, and related maintenance. The first chart shows the total revenues budgeted for each council of governments from the \$0.50 per month wireline 9-1-1 emergency service fee, the revenues budgeted for each council of governments from the \$0.50 per month wireless 9-1-1 emergency

service fee, and the councils of governments' anticipated budgeted expenditures. The Advisory Commission has determined that at this time, 30% of the total wireless 9-1-1 emergency service fee revenue may be spent in conjunction with the wireline service fee. In the case where revenue minus expenditures results in a negative fund balance, 9-1-1 equalization surcharge funds may be used to reimburse councils of governments. Should the statewide 9-1-1 equalization surcharge demand exceed 100% of the available equalization surcharge funds, then an allocation process is approved by the Commission and

applied to 9-1-1 equalization surcharge requests. As shown in the second chart, the revenues and expenditures outlined for the Poison program represents the Poison Control Answering Point (PCAP) operations and network operations. The PCAP operations include the expenditures related to the triaging of poison calls into the six individual PCAPs. The network operations represent the telecommunications, equipment, and administrative costs for the implementation of the Poison Control Network.



BUDGETED 9-1-1 PROGRAM EXPENDITURES AND ALLOCATIONS								
COUNCILS OF GOV.	BUDGETED EXPENDITURES		BUDGETED WIRELINE REVENUE		BUDGETED WIRELESS REVENUE		BUDGETED SURCHARGE ALLOCATIONS	
	FY98	FY99	FY98	FY99	FY98*	FY99**	FY98	FY99
AACOG	\$1,035,466	\$1,209,099	\$385,330	\$392,150	\$69,064	\$15,938	\$255,672	\$536,677
ARK-TEX	\$1,125,228	\$911,858	\$768,162	\$782,259	\$188,831	\$43,576	\$0	\$0
BVCOG	\$810,914	\$752,346	\$311,787	\$318,023	\$66,653	\$15,381	\$174,278	\$280,691
CAPCO	\$9,241,779	\$4,540,147	\$4,894,910	\$4,407,098	\$1,477,978	\$341,072	\$0	\$0
CTCOG	\$1,522,048	\$1,213,092	\$954,326	\$981,338	\$351,719	\$81,166	\$9,470	\$68,834
CBCOG	\$1,738,609	\$1,732,167	\$1,687,502	\$1,735,625	\$258,932	\$59,754	\$0	\$0
CVCOG	\$1,653,798	\$1,393,133	\$418,500	\$426,870	\$171,949	\$39,681	\$373,053	\$620,810
DETCOG	\$1,806,825	\$1,123,646	\$979,710	\$999,304	\$152,500	\$35,192	\$232,782	\$52,312
ETCOG	\$1,775,736	\$1,452,235	\$753,874	\$761,591	\$142,043	\$32,779	\$218,020	\$440,770
GCRPC	\$959,264	\$599,975	\$470,870	\$522,094	\$107,287	\$24,759	\$134,060	\$18,524
HOTCOG	\$923,129	\$645,915	\$292,122	\$306,727	\$77,028	\$17,776	\$161,106	\$215,346
HGAC	\$3,907,850	\$1,791,656	\$1,621,503	\$1,679,677	\$561,937	\$129,678	\$646,457	\$0
LRGVDC	\$1,765,510	\$1,618,840	\$1,305,856	\$1,436,442	\$155,200	\$35,815	\$0	\$0
MRGDC	\$1,432,933	\$746,847	\$306,032	\$316,708	\$51,090	\$11,790	\$449,822	\$310,022
NORTEX	\$1,577,559	\$468,064	\$239,504	\$244,845	\$66,453	\$15,335	\$466,496	\$138,282
NCTCOG	\$2,698,398	\$2,288,162	\$2,240,017	\$2,374,416	\$730,184	\$168,504	\$0	\$0
PRPC	\$1,841,523	\$1,425,895	\$625,800	\$657,090	\$197,383	\$45,550	\$281,893	\$484,681
PBRPC	\$1,207,692	\$824,013	\$256,524	\$256,524	\$84,329	\$19,461	\$304,143	\$367,179
RGCOG	\$461,649	\$295,927	\$66,396	\$66,396	\$11,161	\$2,576	\$172,087	\$185,683
SETRPC	\$1,591,368	\$1,367,890	\$1,278,500	\$1,367,300	\$306,231	\$70,669	\$0	\$0
SPAG	\$1,237,109	\$1,056,483	\$297,902	\$297,902	\$108,570	\$25,055	\$321,058	\$491,462
STDC	\$888,845	\$534,190	\$526,350	\$542,141	\$34,819	\$8,035	\$78,810	\$0
TEXOMA	\$647,245	\$406,725	\$296,946	\$305,855	\$92,574	\$21,363	\$50,071	\$53,270
WCTCOG	\$1,470,097	\$1,109,662	\$574,688	\$586,183	\$202,148	\$46,649	\$233,711	\$319,476
Districts	\$54,419	\$0	\$0	\$0	\$0	\$0	\$54,419	\$0
<b>TOTALS</b>	<b>\$43,374,993</b>	<b>\$29,507,967</b>	<b>\$21,553,111</b>	<b>\$21,764,760</b>	<b>\$5,666,063</b>	<b>\$1,307,554</b>	<b>\$4,617,207</b>	<b>\$4,604,919</b>
* Budgeted FY98 wireless revenue includes 100% of projected FY97 wireless revenue plus 30% of projected FY98 wireless revenue.								
** Budgeted FY99 wireless revenue represents 30% of projected FY99 wireless revenue.								

AACOG	Alamo Area Council of Governments	LRGVDC	Lower Rio Grande Valley Development Council
ARK-TEX	ARK-TEX Council of Governments	MRGDC	Middle Rio Grande Development Council
BVCOG	Brazos Valley Council of Governments	NORTEX	NORTEX Regional Planning Commission
CAPCO	Capital Area Planning Council	NCTCOG	North Central Texas Council of Governments
CTCOG	Central Texas Council of Governments	PRPC	Panhandle Regional Planning Commission
CBCOG	Coastal Bend Council of Governments	PBRPC	Permian Basin Regional Planning Commission
CVCOG	Concho Valley Council of Governments	RGCOG	Rio Grande Council of Governments
DETCOG	Deep East Texas Council of Governments	SETRPC	South East Texas Regional Planning Commission
ETCOG	East Texas Council of Governments	SPAG	South Plains Association of Governments
GCRPC	Golden Crescent Regional Planning Commission	STDC	South Texas Development Council
HOTCOG	Heart of Texas Council of Governments	TEXOMA	TEXOMA Council of Governments
HGAC	Houston-Galveston Area Council	WCTCOG	West Central Texas Council of Governments

BUDGETED POISON CONTROL PROGRAM EXPENDITURES AND ALLOCATIONS					
PCAP/NETWORK OPERATIONS	BUDGETED EXPENDITURES		PROGRAM	BUDGETED SURCHARGE REVENUE	
	FY98	FY99		FY98	FY99
Amarillo PCAP	\$859,449	\$859,449	Current Year Other Revenue Source	\$6,799,270	\$6,799,270
Dallas PCAP	\$1,145,831	\$1,145,831			
El Paso PCAP	\$745,729	\$745,729			
Galveston PCAP	\$1,227,478	\$1,227,478			
San Antonio PCAP	\$927,566	\$927,566			
Temple PCAP	\$801,184	\$801,184			
Network Operations	\$1,894,535	\$1,889,064			
TOTAL	\$7,401,772	\$7,396,321	TOTAL	\$7,407,818	\$7,407,818

The Advisory Commission on State Emergency Communications may ultimately revise these proposed budgets and allocations during their strategic planning process, which will occur through action or direction given during the Advisory Commission on State Emergency Communications' open meetings on these issues. More specific details on these proposed budgets and allocations and other related information can be obtained by request from Julie Warton, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. This more specific detailed information has been provided to the Public Utility Commission of Texas pursuant to Texas Health and Safety Code Annotated 771.0725(b) and proposed PUC Substantive Rule §26.431(c)(3).

Pursuant to Texas Health and Safety Code Annotated 771.0725(c) and proposed PUC Substantive Rule §26.431, the Public Utility Commission of Texas is reviewing the specific fee and surcharge documentation provided by the Advisory Commission on State Emergency Communications and the proposed rates and allocations. Persons who wish to comment on these matters should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call Eric White, Assistant General Counsel, at (512) 936-7297 no later than 20 days after publication of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Public Utility Commission at (512) 936-7136. All comments should reference PUC Project Number 19503.

TRD-9811288  
James D. Goerke  
Executive Director  
Advisory Commission on State Emergency Communications  
Filed: July 17, 1998



## Texas Ethics Commission

### Texas Ethics Commission List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Kristin Newkirk at (512)463-5800 or (800) 325-8506.

Deadline: Monthly Lobby activity report, due April 10, 1998

Mark Seale, 701 Brazos, Ste 600, Austin, TX 78701

Melinda Wheatley, P.O. Box 40519, San Antonio, TX 78229

Deadline: Monthly PAC report, due April 6, 1998

Johnny F. Nunez, Fort Bend County HISPAC 2623 Cedar Brook Ct., Stafford, TX 77477-6127

Robert Ruiz, Houston Police Patrolmen's Union 811 North Loop W, Houston, TX 77008-1726

Deadline: Monthly Lobby activity report, due March 10, 1998

Melinda Wheatley, P.O. Box 40519, San Antonio, TX 78229

Deadline: Monthly PAC report, due March 5, 1998

Robert Ruiz, Houston Police Patrolmen's Union 811 North Loop W, Houston, TX 77008-1726

Deadline: 8 day before election Candidate/Officeholder campaign finance report, due March 3, 1998

Robert Ashton Herrera, P.O. Box 37177, San Antonio, TX 78237-0177

Roger Q. Settler, 1824 IH 35 S #312, Austin, TX 78704

Waco Tabor, 701 S. Main, Jacksboro, TX 76458

Deadline: 8 day before election PAC campaign finance report, due March 3, 1998

Peter Brooks, Equity PAC 1904 Goodrich #7, Austin, TX 78704

Deadline: Personal Financial Statement by a candidate, due February 11, 1998

David Barron, 406 Leslie, Bryan, TX 77802

Lon Burnam, P.O. Box 1894, Fort Worth, TX 76101

Jeanne M. Doogs, 300 Trinidad Ct., Fort Worth, TX 76126

J. David Gutierrez, 2047 Estrada Pkwy #116, Irving, TX 75061

Robert Ashton Herrera, P.O. Box 37177, San Antonio, TX 78237-0177

Alberto Martinez, P.O. Box 549, San Diego, TX 78384

Lloyd W. Oliver, P.O. Box 271503, Houston, TX 77277

Jennings Young, Rt 1 Box 230L, Atlanta, TX 75551

Harold C. Gaither Jr., 2600 Lone Star Dr., Dallas, TX 75212

Ron Hinds, 965 Gibbs Crossing, Coppell, TX 75019

Alex Luna, 600 Village Rd. #212G, Port Lavaca, TX 77979

J. Manuel Montez, 4327 Cabell Dr., Dallas, TX 75204

Hector J. Villarreal, 400 E. Cano, Edinburg, TX 78539

Deadline: Monthly Lobby activity report, due February 10, 1998

Melinda Wheatley, P.O. Box 40519, San Antonio, TX 78229

Deadline: 30 Day before election Candidate/Officeholder campaign finance report, due February 9, 1998

Dan Engel, 2608 Greenwood, Arlington, TX 76013

J. David Gutierrez, 2047 Estrada Pkwy #116, Irving, TX 75061

Robert Ashton Herrera, P.O. Box 37177, San Antonio, TX 78237-0177

Alberto T. Martinez, P.O. Box 549, San Diego, TX 78384

Sylvia R. Mendelsohn, 17592 S. US Highway 281, San Antonio, TX 78221

Deadline: Monthly PAC report, due February 5, 1998

Joe F. Munoz, Austin Police PAC 715 E. 8th St., Austin, TX 78701

Johnny F. Nunez, Fort Bend County HISPAC 2623 Cedar Brook Ct., Stafford, TX 77477-6127

Deadline: Semiannual Candidate/Officeholder campaign finance report, due January 15, 1998

Kathleen Ballanfant, 5160 Spruce, Bellaire, TX 77401

Burgess Beall, 5510 Icon St., Austin, TX 78744-3837

Stephen P. Birch, 4911 Haverwood Ln. #2924, Dallas, TX 75287-4440

Howard Bridges Jr., 434 W. Kiest Blvd. #100, Dallas, TX 75224

Anna L. Cavazos Ramirez, 1307 Wingfoot Loop, Laredo, TX 78041

Chloe N. Daniel, P.O. Box 810570, Dallas, TX 75381-0570

Richard N. Draheim Jr., 275 Henry M Chandler's Dr., Rockwall, TX 75087

Bill Fisher, 3021 Sonora Trl., Fort Worth, TX 76116-5005

John W. Galloway Jr., P.O. Box 252, Beeville, TX 78104

Mario Garcia, 735 W. 10th, Mercedes, TX 78570

Baltazar Garcia, 712 McDaniel, Houston, TX 77022

Thomas L. Gatton, 2320 Southwest Fwy #C, Houston, TX 77098

Michael J. Hardy, P.O. Box 136704, Fort Worth, TX 76136-0704

Samuel W. Hudson III, P.O. Box 150972, Dallas, TX 75315-0972

Dennis Jones, P.O. Box 1027, Lufkin, TX 75902

Roman Martinez, 1009 Graceland. Houston, TX 77009

Robert H. Offutt, 1519 Spanish Oaks, San Antonio, TX 78213

Linette Ovard, 701 E. Shady Grove Rd., Irving, TX 75060-6024

Fernando R. Ramirez, 2735 Lakeshore Dr., Port Arthur, TX 77640

Heriberto Silva, P.O. Box 249, Garciville, TX 78547

Victor Smith, 1423 W. Red Bird Lane, Dallas, TX 75232

Melva Washington-Becnel, 2403 Arbor, Houston, TX 77004

Darren Baucum, P.O. Box 653, Gainsville, TX 76241-0653

William M. Eastland, P.O. Box 13162, Arlington, TX 76094-0162

S. Christopher Larue, 4014 Richmond Ave., Houston, TX 77027

James W. Marchbanks III, P.O. Box 1683, Weatherford, TX 76087

Daniel C. Rice, 3115 Wilson Rd., Conroe, TX 77304

Deadline: Semiannual PAC campaign finance report due January 15, 1998

Johnny Atkinson, Committee For Better Education P.O. Box 612, Goodrich, TX 77335

Byron LeFlore, Committee For Judicial Reform 700 N. St. Mary's St. #800, San Antonio, TX 78205

Enrique M. Barrera, Edgewood PAC 6435 Buena Vista, San Antonio, TX 78237

Alfred Adask, Equity Under All Law 9794 Forest Ln. #159, Dallas, TX 75243

William M. Eastland, Free Republican Caucus P.O. Box 13162, Arlington, TX 76094-0162

Sherry Griffith, Houston Heights PAC 626 Al Gregg, Houston, TX 77008

Clarence B. Bagby, Houston Historic Preservation PAC 2003 Kane St., Houston, TX 77007-7612

Vidal G. DeLeon, McLennan County Mexican Americans For Better 16619 Baylor Ave., Waco, TX 76706

Deborah A. Pruitt, Mesquite Republican Women's Club 301 E. Fork Rd., Sunnyvale, TX 75182

H.J. Johnson, Pleasant Wood Pleasant Grove PAC P.O. Box 150408, Dallas, TX 75305-0408

Leopoldo P. Botello, San Antonio Certified Public Accountants PAC P.O. Box 40517, San Angelo, TX 78229-1517

Hilda Bustos, San Antonio Latina PAC 16142 Treeridge Place, San Antonio, TX 78247-5633

Pat Stevens, South Denton County PAC 2025 Aspen Dr., Highland Village, TX 75067

Edward Hickson, Tarrant County Deputy Sheriff's Assn. PAC 111 N. Houston #211, Fort Worth, TX 76102

William M. Eastland, Texans For Freedom P.O. Box 13162, Arlington, TX 76094-0162

Sandra Haverlah, Texas Citizen Action PAC 927 Acorn Oaks, Austin, TX 78745

Johnny R. Frederick, Texas Pawn Brokers Assn. PAC 1779 Wells Branch Pkwy #110B, Austin, TX 78728

Charles J. Gaines, Texas Tea PAC 16338 Southampton Dr., Spring, TX 77379

G. Daniel Mena, Unity El Paso County 3233 N. Piedras, El Paso, TX 79930-3703

Ann Cowan, Bell County Democrats in Action 505 W. Royal, Temple, TX 76501

Deadline: Lobby activity report due January 12, 1998

Daniel W. Crider, 100 Congress Ave #2100, Austin, TX 78701

L. Alan Gray, 1108 Lavaca #100, Austin, TX 78701

Allen H. Kaplan, 1908 B. Romeria, Austin, TX 78757

David T. Lawton, P.O. Box 1309, Hutchins, TX 75141

Douglas Martin, 3506 Tom Green St., Austin, TX 78705

Roger P. Miller, 823 Congress Ave #915, Austin, TX 78701

Neil R. Mohr, WMI Southwest #1000, 1320 Greenway Dr., Irving, TX 75038

David L. Ralston, Jenkens & Gilchrist PC #1800, 1100 Louisiana, Houston, TX 77002

Rell Rice, 2809 Greenlawn Pkwy, Austin, TX 78757

R. Elena Rios, 9901 Richmond Ave. #334, Houston, TX 77042-4513

Charlie Schnabel Jr., P.O. Box 1572, Austin, TX 78767-1572

Bill Sims, 1800 Lavaca #103, Austin, TX 78701

Robert H. Sparks Jr., 1108 Lavaca #100, Austin, TX 78701

Melinda Wheatley, P.O. Box 40519, San Antonio, TX 78229

Deadline: Monthly PAC report, due January 5, 1998

Mina A. Clark, Travis County Democratic Party P.O. Box 684263, Austin, TX 78768-4263

TRD-9811555

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: July 22, 1998



## General Services Commission

### Notice of Request for Offers for the Purchase of Raw Land In Baytown, Texas

Notice is hereby given to all interested parties that pursuant to V.T.C.A., Government Code, Title 10, Subtitle D, Chapter 2166, §2166.052, the General Services Commission (the "Commission"), on behalf of the Department of Public Safety, is soliciting proposals for the potential purchase of raw land in the Baytown, Texas area of at least 2.5 acres or a minimum of 108,900 square feet of contiguous

land. The Commission will evaluate the proposals in accordance with the criteria outlined in a Request for Offers. The Request for Offers (RFO Number 99-405-001) containing all the requirements necessary for an appropriate response may be obtained on and after July 29, 1998 from Facilities Planning at (512) 475-3498.

All responses must be received in a sealed envelope no later than 3:00 p.m. Central Standard Time, on August 28, 1998, at the following address: General Services Commission, Central Services Building, Room 180, RFO Number 99-405-001, 1711 San Jacinto, P. O. Box 13047, Austin, Texas 78711-3047

TRD-9811521

Judy Ponder

General Counsel

General Services Commission

Filed: July 21, 1998



## Texas Department of Health

### Notice of Amendment to the License of Waste Control Specialists

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176, 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of the amendment changes the radiation safety officer and training supervisor, and updates the Andrews Site Organizational Chart and certain position descriptions for WCS. The TDH has determined that the amendment of the license, Title 25 of the Texas Administrative Code (TAC) Chapter 289, *Texas Regulations for Control of Radiation* (TRCR), and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of the TRCR; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code §401.114 and as set out in TRCR 13.5. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to a 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 land 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 Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 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 this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.114, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 Texas Administrative Code §1.21. et seq.) and the TRCR.

A copy of the license amendment and all material submitted is available for public inspection at the Bureau of Radiation Control, 8407 Wall Street, Austin, Texas. Information relative to the amendment may be obtained by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

TRD-9811303  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: July 17, 1998



## **Texas Health and Human Services Commission**

### Notices of Public Hearings

The Texas Department of Human Services and the Texas Health and Human Services Commission will conduct a joint public hearing to receive comments on proposed payment rates for the following programs and services: Family Care and Residential Care. The hearing is held in compliance with 40 TAC §24.101(b)(4), which requires public hearings on proposed payment rates. The hearing will be held on August 14, 1998 at 9:30 a.m. in Room 103 of the John H. Winters Building at 701 West 51st Street, Austin, Texas (First Floor, West Tower). Written comments will be accepted in lieu of testimony until 5:00 p.m., Central Time, on the day of the hearing. Written comments may be delivered by U.S. mail to the attention of Mr. Ron Dowling, Texas Department of Human Services, P.O. Box 149030, MC W-425, Austin, Texas 78714-9030. Hand deliveries or express delivery will be accepted at 701 West 51st Street, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile to Mr. Dowling at (512) 438-3014. Interested parties may pick up or request to have mailed to them briefing packages concerning the proposed payment rates by contacting Mr. Dowling at (512) 438-4817.

Persons with disabilities planning to attend the hearing who may need auxiliary aids or services are asked to contact Mr. Dowling at (512) 438-4817 by August 7, 1998 so that appropriate arrangements can be made.

TRD-9811493  
Marina S. Henderson  
Executive Deputy Commissioner  
Texas Health and Human Services Commission  
Filed: July 21, 1998



The Texas Health and Human Services Commission and the Texas Department of Human Services will conduct a joint public hearing to receive comments on proposed payment rates for the following programs and services:

Primary Home Care; Community Based Alternatives Waiver (CBA); and the Community Living Assistance and Support Services (CLASS) Waiver. The hearing is held in compliance with 1 TAC §355.201(b)(4), which requires public hearings on proposed payment rates. The hearing will be held on August 14, 1998 at 9:30 a.m. in

Room 103 of the John H. Winters Building at 701 West 51st Street, Austin, Texas (First Floor, West Tower).

Written comments regarding payment rates set by the Health and Human Services Commission will be accepted in lieu of testimony until 5:00 p.m., Central Time, on the day of the hearing. Written comments may be delivered by U.S. mail to the attention of Mr. Ron Dowling, Texas Department of Human Services, P.O. Box 149030, MC W-425, Austin, Texas 78714-9030. Hand deliveries or express delivery will be accepted at 701 West 51st Street, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile to Mr. Dowling at (512) 438-3014. Interested parties may pick up or request to have mailed to them briefing packages concerning the proposed payment rates by contacting Mr. Dowling at (512) 438-4817.

Persons with disabilities planning to attend the hearing who may need auxiliary aids or services are asked to contact Mr. Ron Dowling of the Texas Department of Human Services, at (512) 438-4817 by August 7, 1998 so that appropriate arrangements can be made.

TRD-9811492  
Marina S. Henderson  
Executive Deputy Commissioner  
Texas Health and Human Services Commission  
Filed: July 21, 1998



## **Texas Department of Housing and Community Affairs**

Notice of Administrative Hearing (MHD1997001321D and MHD1997002654D)

### **Manufactured Housing Division**

**Thursday, August 6, 1998, 1:00 p.m.**

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

### AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Gordon Ezell dba Ezell's Wrecker and Moving Service to hear alleged violations of the Act, §7(d) and the Rules §80.125(e) regarding obtaining, maintaining or possessing a valid installer's license. SOAH 332-98-1356. Department MHD1997001321D and MHD1997002654D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9811569  
Larry Paul Manley  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: July 22, 1998



## **Texas Department of Insurance**

### Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to Texas for FRANKENMUTH MUTUAL INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Frankenmuth, Michigan.

Application for incorporation in Texas for VALUE BEHAVIORAL HEALTH OF TEXAS, INC., a domestic health maintenance organization. The home office is located in Irving, Texas.

Application to change the name of INTERCONTINENTAL LIFE INSURANCE COMPANY to INVESTORS LIFE INSURANCE COMPANY OF INDIANA, a domestic life company. The home office is located in Austin, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9811477  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 21, 1998



#### Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket 2375 on Tuesday, August 25, 1998, at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

The purpose of this hearing is to receive comments regarding the appropriate rate reductions for certain lines and sublines of liability coverages to reflect the savings resulting from tort reform measures adopted by the 73rd and 74th sessions of the Texas Legislature. Article 5.131 requires that the rate reductions be adopted by rule. Therefore, the Commissioner will hear comments from interested parties regarding proposed amendments to 28 Texas Administrative Code, Subchapter R, Temporary Rate Reduction for Certain Lines of Insurance. A formal notice of the proposed amendments will be published in the *Texas Register* at a later date. Individuals who wish to present comments at the hearing will be asked to register immediately prior to the hearing.

Written comments may be submitted to the Chief Clerk's Office, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of each comment should be submitted to Ann Bright, Agency Counsel Section, Legal and Compliance, Mail Code 110-1A, Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104.

Information compiled by Department staff for presentation at the hearing, consisting of data from insurance company closed claim reports and the results of focus groups conducted by the LBJ School of Public Affairs, will be available on the TDI Web page at [www.tdi.state.tx.us](http://www.tdi.state.tx.us) or upon request from the Department prior to the hearing. Please contact Angela Arizpe at (512) 463-6326.

TRD-9811487  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 21, 1998



#### Notices of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2374 scheduled for September 23, 1998 at 9:00 a.m., in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1995, 1997, 1998, and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0798-18-I), was filed on July 9, 1998.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1995, 1997, 1998, and 1999 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0798-18-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9811575  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 22, 1998



The Commissioner of Insurance, at a public hearing under Docket No. 2376 scheduled for September 23, 1998 at 9:00 a.m., in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a Staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rules 55, 71, 72, 74, and 75 concerning eligibility of certain individuals for personal auto coverage and the Texas Driving Insurance Plan. Staff's petition (Ref. No. A-0798-20-I), was filed on July 22, 1998.

The most extensive changes that Staff recommends are to Manual Rule 72 (Personal Auto Policy and Coverage-Eligibility). These amendments expand the list of persons eligible for personal auto coverage. Instead of the current requirement that a jointly owned auto be owned by a husband and wife, Staff's proposal would allow personal auto coverage for an auto jointly owned by two or more individuals who are residents of the same household (proposed Rules 71, 72, and 74). Additionally, under Staff's proposed Rule 72, new Section E, personal auto coverage may be written for joint named insureds who are related by blood, marriage or adoption, and who are not residents of the same household, even if they do not jointly own the auto if: 1. the auto is owned by one or more of the joint named insureds who are residents of the household address shown

in the policy, and 2. the joint named insured who is a resident of a different household is the primary operator of the auto.

Under Staff's proposal for Rule 72.A., certain types of vehicles may be afforded personal auto coverage if they meet the current requirement of being written on a specified auto basis, plus the new standard of being owned jointly by two or more individuals (not necessarily husband and wife) who are residents of the same household. A similar change is proposed for miscellaneous type vehicles under Rule 72.B.

Staff proposes amending Rule 71 (Definitions) regarding the definition of a utility type vehicle to be considered a private passenger auto. New wording for Rule 71.2.a. is proposed as follows: "a. owned or leased under written contract for a continuous period of at least six months: (1) by one or more individuals who are residents of the same household, or (2) by one or more individuals who are not residents of the same household, but are related by blood, marriage or adoption, including a ward or foster child; and...."

In Rule 74 (Private Passenger Auto Classifications) Staff would amend Section A (Private passenger autos) by replacing the first two phrases with the following language: "owned by an individual or jointly by two or more individuals who are residents of the same household; or owned jointly by two or more individuals who are not residents of the same household address shown in the policy, but are related by blood, marriage or adoption, including a ward or foster child;...."

Staff would also eliminate the following wording under Section A.5. (which language would no longer be accurate): "\*Not eligible for coverage under a Personal Auto Policy."

Staff asserts that if Rules 71, 72, and 74 are amended, then Rule 55 (Eligibility) and Rule 75 (Texas Driving Insurance Plan) will also need to be amended in order for their eligibility provisions to be compatible with those first three rules. Therefore, Staff proposes to amend Rule 55.D.1. and E.1., and Rule 75.B.2. by deleting "owned by an individual or husband and wife who are residents of the same household...." Staff would replace the Rule 55 wording with the following: "described in Rule 71...." and the Rule 75 wording with the following: "described in Rules 71, 72, and 74...."

The Manual currently allows certain types of vehicles to be insured by a Personal Auto Policy if the vehicles are owned by an individual, or by a husband and wife who reside in the same household. Otherwise, the vehicles cannot be insured except through multiple policies or by some other policy form, such as the Business Auto Coverage Form. Commercial policies do not provide coverage as broad as the Personal Auto Policy, so Staff has said it appears inappropriate to require them for persons not using their private passenger autos in a commercial enterprise. Furthermore, Staff's petition asserts it could work a financial hardship in some cases to require certain individuals to purchase separate Personal Auto Policies merely because they cannot meet the Manual's current requirements for one such policy. The Manual's requirements are said to be somewhat outdated because of changes in modern life and relationships.

In closing, Staff's petition asserts its proposals would make it easier for individuals to qualify for a single Personal Auto Policy. Staff believes greater fairness will result from such changes.

A copy of the petition, including exhibits with the full text of the proposed amendments to the Manual, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0798-20-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9811576

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 22, 1998



The Commissioner of Insurance, at a public hearing under Docket No. 2377 scheduled for September 23, 1998 at 9:00 a.m., in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a Staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Endorsement 523B, Rental Reimbursement Coverage. Staff's petition (Ref. No. A-0798-21-I), was filed on July 22, 1998.

Staff proposes to amend the Manual's Personal Auto Policy Endorsement 523B (to be redesignated 523C), Rental Reimbursement Coverage, to remove the provision that excludes coverage when there is a total theft of the auto. Staff would substitute new language as follows: "When there is a total theft of the auto, the limit of \$20 per day (maximum of \$600) required under Coverage For Damage To Your Auto will be supplemented to the extent the limits in the above Schedule exceed that \$20 per day limit."

Since August 1, 1996, insureds under the Personal Auto Policy have had the option of purchasing variable limits of rental reimbursement coverage, up to \$35 per day (maximum of \$1050) through attachment of Endorsement 523B. However, that endorsement does not apply to total theft of the auto, which is covered up to \$20 per day (maximum of \$600) by the policy's Part D - Coverage For Damage To Your Auto.

Staff recommends deleting the language from Endorsement 523B that excludes coverage for total theft of the auto, and replacing that language with a provision that the total theft \$20 per day limit under the policy will be supplemented to the extent the limits shown in the endorsement's Schedule exceed that \$20 per day limit. Staff asserts that such an amendment appears to give a more logical result than the current endorsement's language, because an insured who wants \$35 per day coverage will need it just as much for a total theft loss as for any other loss that puts the auto out of service.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0798-21-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An

additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9811577

Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 22, 1998



### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Baylor Health Network, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Application for incorporation in Texas of Health First of Texas, P.A., a domestic third party administrator. The home office is Victoria, Texas.

Application for incorporation in Texas of Mumtaz Farash, (doing business under the assumed name of Trans Health Care, P.A.), a

domestic third party administrator. The home office is Fort Worth, Texas.

Application for admission to Texas of United Healthcare Services, Inc., a foreign third party administrator. The home office is Minnetonka, Minnesota.

Application for admission to Texas of NATLSCO, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Application for admission to Texas of Management Applied Programming, Inc., a foreign third party administrator. The home office is Los Angeles, California.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, Texas Department of Insurance, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9811266

Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 16, 1998



### Legislative Budget Board

Schedule for Joint Budget Hearings on Appropriations Requests for the 2000–2001 Biennium



**Schedule for Joint Budget Hearings (for the period of August 3 to August 14, 1998) on Appropriations Requests for the 2000-2001 Biennium.**

Texas Optometry Board Wednesday, August 12, 1998	11:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Texas Cosmetology Commission Wednesday, August 12, 1998	1:30 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
State Board of Veterinary Medical Examiners Thursday, August 13, 1998	9:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Board of Private Investigators and Private Security Agencies Thursday, August 13, 1998	10:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Court Reporters Certification Board Friday, August 14, 1998	3:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Executive Council of Physical Therapy & Occupational Therapy Examiners Friday, August 14, 1998	9:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Texas State Board of Plumbing Examiners Friday, August 14, 1998	10:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Commission on Law Enforcement Officer Standards & Education Friday, August 14, 1998	10:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
State Board of Podiatric Medical Examiners Friday, August 14, 1998	11:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas

**Schedule for Joint Budget Hearings (for the period of August 3 to August 14, 1998) on Appropriations Requests for the 2000-2001 Biennium.**

Board of Vocational Nurse Examiners  
Friday, August 14, 1998

1:30 PM

Capitol Extension, E1.014,  
14th & Congress Ave.

Austin, Texas

Board of Nurse Examiners

Friday, August 14, 1998

3:00 PM

Capitol Extension, E1.014,  
14th & Congress Ave.

Austin, Texas

TRD-9811573  
 John Keel  
 Director  
 Legislative Budget Board

Filed: July 22, 1998

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 Texas Department of Licensing and Regulation  
 Vacancy on Architectural Barriers Advisory Committee

*Schedule for Joint Budget Hearings (for the period of August 3 to August 14, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Board of Tax Professional Examiners Thursday, August 06, 1998	1:00 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Children's Trust Fund of Texas Council Friday, August 07, 1998	9:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Texas Incentive and Productivity Commission Friday, August 07, 1998	10:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Texas State Board of Public Accountancy Monday, August 10, 1998	9:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Board of Examiners of Psychologists Monday, August 10, 1998	1:30 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Texas State Board of Pharmacy Tuesday, August 11, 1998	2:00 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Health Professions Council Tuesday, August 11, 1998	3:30 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Board of Barber Examiners Wednesday, August 12, 1998	9:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Polygraph Examiners Board Wednesday, August 12, 1998	9:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas

The Texas Commission of Licensing and Regulation announces vacancies on the Architectural Barriers Advisory Committee established by Texas Civil Statutes, Article 9102, Architectural Barriers. The pertinent rules may be found in 16 TAC §68.65. The Committee is composed of eight members, appointed by the Texas Commission of Licensing and Regulation. Four of the members are building professionals and four are consumer members with disabilities. There is presently a vacancy for one building professional and one consumer member with a disability.

Interested persons should request an application from the Texas Department of Licensing and Regulation by calling (512) 463-7348 or FAX (512) 475-2872.

Applications must be returned to the Texas Department of Licensing and Regulation not later than August 19, 1998.

Applicants may be asked to appear for an interview with members of the Texas Commission of Licensing and Regulation, however any required travel for an interview would be at the applicant's expense.

TRD-9811183

Rachelle A. Martin

Executive Director

Texas Department of Licensing and Regulation

Filed: July 15, 1998

◆ ◆ ◆  
**Midwestern State University**

**Request for Proposals for Outside Counsel**

**OUTSIDE COUNSEL**

REQUESTOR: Board of Regents Midwestern State University 3410 Taft Blvd. Wichita Falls, TX 76308 STATEMENT OF PURPOSE: The Board of Regents of Midwestern State University is requesting proposals for the purpose of retaining a firm to act as the university's outside counsel. INSTRUCTIONS TO PROPOSERS: A. All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal-Outside Counsel Services." All proposals must be received by 11:00 a.m. August 5, 1998. B. Three (3) copies of the proposal are required and may be mailed to: Midwestern State University, ATTN: Debbie Barrow, Executive Assistant, 3410 Taft Blvd., Wichita Falls, TX 76308 or hand delivered to 3410 Taft Blvd., Room 107, Hardin Administration Building, Wichita Falls, TX by 11:00 a.m. August 5, 1998. Each proposal should indicate the name and phone number of the principal contact for the firm. C. Questions or comments concerning this request for proposals should be directed to: Dr. Louis J. Rodriguez, President, Midwestern State University, 3410 Taft Blvd., Wichita Falls, TX 76308, (817) 397-4211. D. The Board will select a firm at its meeting on August 7, 1998. The selected firm will be notified on or about August 15, 1998. E. The Board shall submit its selection to the Texas State Attorney General who has final approval. TERMS AND CONDITIONS: A. The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within thirty (30) days after the award of the proposal. B. The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants. C. The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed. D. Any agreement or contract resulting from acceptance of a proposal shall

be on forms either supplied by or approved by the Attorney General. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts. E. The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board. ELIGIBLE PROPOSERS A. The Midwestern State University Board of Regents will only consider proposals from law firms licensed in Texas with offices located within sixty (60) miles of Midwestern State University, Wichita Falls, Wichita County, Texas. B. Counsel must have prior higher education legal experience and preferably be members of the Texas Association of State University Attorneys and the School Law Section of the State Bar of Texas. C. Counsel must maintain malpractice insurance in an amount of not less \$1,000,000. SCOPE OF SERVICES: The selected firm will provide the following services: A. In all situations where local assistance is required by the Office of the Attorney General on litigation or general counsel matters being handled by the Office of the Attorney General, or where the Office of the Attorney General defers the matter to local counsel. B. In situations where expertise in school law and policy is required. C. In situations where prior knowledge or experience with the particular facts or issues in the matter or where other unusual circumstances exist which would facilitate the most timely and economical handling of the matter. D. In emergency and other situations that require a response time that the Office of the Attorney General cannot reasonably provide. E. In situations involving personal meetings or conferences where the charges for legal fees and expenses for travel by the Office of the Attorney General would result in a total cost greater than could be obtained by using the local counsel. QUALIFICATIONS: A. Describe how the firm is organized and how its resources will be put to work for MSU. B. List the firm's most recent three (3) years of experience in higher education or school law relationships. State the term of the relations, briefly describe the work performed, and include the names, addresses and phone numbers of contact persons. C. Affirm that no individual in the firm has represented any client in any matter pending before Midwestern State University during the previous six month period. PERSONNEL: A. Indicate which individuals in the firm would be assigned in a direct, on-going working relationship with the Board and staff and include their resumes. Indicate the role these individuals assumed in the three-year history of higher education or school law counsel relationships as described in subsection B of the QUALIFICATIONS section. B. Indicate the availability of individuals described in subsection A of this section. C. Include a description of your firm's Affirmative Action program and include any strides made in the employment of women and minorities. COMPENSATION: Explain the firm's proposed hourly fee schedule and the projected annual cost for the scope of services detailed in this RFP. If the firm proposes that the university bear the costs of incidental expenses associated with these services, clearly state what type of incidental expense and estimated costs the university will be expected to bear.

TRD-9811589

Dr. Louis J. Rodriguez

President

Midwestern State University

Filed: July 22, 1998

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**Texas Natural Resource Conservation Commission**

Notice of Applications for Waste Disposal/Discharge Permits

Attached are Notices of Applications for waste disposal/discharge permits issued during the period of July 1, 1998 to July 10, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerk's Office-MC105, P.O. Box 13087, Austin, Texas 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.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

BASF CORPORATION, 602 Copper Road, Freeport, Texas 77541; the plant site is located in the southwest quadrant defined by the intersection of State Highway 288 and State Highway 332 near the City of Freeport, Brazoria County, Texas; new, Permit No. 03977.

CELANESE ENGINEERING RESINS, INC., P.O. Box 428, Bishop, Texas 78343; the plant site is located adjacent to State Highway - Loop 428, approximately one (1) mile southwest of the City of Bishop, Nueces County, Texas; renewal, Permit No. 00579.

CELANESE LTD., P.O. Box 937, Pampa, Texas 79066-0937; the plant site is located southwest of the intersection of U.S. Highway 60 and FM Road 2300, approximately 3 1/2 miles southwest of the City of Pampa, Gray County, Texas; major amendment, Permit No. 02891.

CITY PUBLIC SERVICE OF SAN ANTONIO, P. O. Box 1771, San Antonio, Texas 78296; the plant site is located at 16120 Streich Road, approximately 2.75 miles northwest of the City of Elmendorf, Bexar County, Texas; renewal, Permit No. 01515.

COMPAQ COMPUTER CORPORATION, P.O. Box 692000, Houston, Texas 77269-2000; the plant site is located approximately 7300 feet east of the intersection of Louetta Road and State Highway 249 in Harris County, Texas; renewal, Permit No. 13508-001.

ENCINAL WATER SUPPLY CORPORATION, P.O. Box 235, Encinal, Texas 78019; the wastewater treatment facilities and disposal site are located approximately 1950 feet southeast of the intersection of U.S. Highway 81 and Interstate Highway 35 in Webb County, Texas; new, Permit No. 13943-001.

EXCEL CORPORATION, P.O. Box 579, Friona, Texas 79035; the plant site is located immediately south of U.S. Highway 60 and the Santa Fe Railroad, approximately 3.3 miles southwest of the City of Friona, Parmer County, Texas; major amendment, Permit No. 01350.

FINA OIL AND CHEMICAL COMPANY, La Porte Plant, P.O. Box 888, Deer Park, Texas 77536-0888; the plant site is located on State

Highway 134 (Battleground Road) approximately 1.6 miles south of the San Jacinto Monument, in the City of Deer Park, Harris County, Texas; renewal, Permit No. 01000.

GUADALUPE BLANCO RIVER AUTHORITY, Post Office Box 146, Port Lavaca, Texas 77979; the plant site is located approximately 3,400 feet west of the intersection of Farm-to-Market Road 2433 and State Route 35 and approximately 7,200 feet southeast of the intersection of Farm-to-Market Road 2433 and Farm-to-Market Road 1679 and United States Route 87 in Calhoun County, Texas; new, Permit No. 13954-001.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 119, c/o Schwartz, Page & Harding, 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056; the plant site is located approximately 2,000 feet south of Spring Cypress Road and 5,000 feet east of the intersection of Louetta and Spring Cypress Roads in Harris County, Texas; renewal, Permit No. 11024-001.

HEREFORD BI-PRODUCTS, INC., P.O. Box 2257, Hereford, Texas 79045; the plant site is located 3.5 miles southwest of the City of Hereford on Highway 60, 4.2 miles southwest of the intersection of Highway 385 and Highway 60, and 3.5 miles northeast of the intersection of Farm-to-Market Road 1057 and Highway 60, Deaf Smith County, Texas; major amendment, Permit No. 01300.

CITY OF HOUSTON, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549; the plant site of the Fresh Water Supply District No. 23 Wastewater Treatment Facilities is located at 8219 Kellet Street, in the City of Houston, in Harris County, Texas; renewal, Permit No. 10495-016.

HUDSON PRODUCTS CORPORATION, P.O. Box 210, Beasley, Texas 77417; the plant site is located approximately 0.2 mile north of U.S. Highway 59 and approximately 1.3 miles west of State Highway 360, near the City of Beasley, Fort Bend County, Texas; new, Permit No. 03985.

JOHANN HALTERMANN, LTD., 16717 Jacintoport Boulevard, Houston, Texas 77015; the plant site is located at 16717 Jacintoport Boulevard on the north bank of the Houston Ship Channel, approximately 1.6 miles east of the intersection of Sheldon Road and Jacintoport Boulevard near the Community of Channelview, Harris County, Texas; renewal, Permit No. 02458.

JONES CHEMICALS, INC., 1811 I-10 East, Suite 222, Houston, Texas 77029; the plant site is located at 1777 Haden Road in the City of Houston, Harris County, Texas; renewal, Permit No. 01801.

LETOURNEAU, INC., P.O. Box 2307, Longview, Texas 75606; the plant site is located at 2400 S. McArthur Blvd., approximately 0.25 mile northwest of the intersection of Estes Parkway and Farm-to-Market Road 1845 and approximately 0.75 mile north of Interstate Highway 20 in the southwestern portion of the City of Longview, Gregg County, Texas; renewal, Permit No. 01603.

THERON L. MOORE, SR., 8610 FM 2457, Livingston, Texas 77351; the plant site is located approximately 3000 feet north of Farm-to-Market Road 2457 and approximately 12 miles northwest of the City of Livingston on the east shore of Lake Livingston in Polk County, Texas; renewal, Permit No. 11621-001.

NORTH STAR STEEL TEXAS, INC., P. O. Box 2390, Beaumont, Texas 77704; the plant site is located north of the Neches River, south of the Kansas City Railroad and east of the City of Beaumont, Orange County, Texas; renewal, Permit No. 01971.

NORTH TEXAS MUNICIPAL WATER DISTRICT, P.O. Box 2408, Wylie, Texas 75098; the plant site is located 200 feet east of Los Rios

Boulevard, approximately 700 feet north of Farm-to-Market Road 544, one mile west of Farm-to-Market Road 544 crossing of Rowlett Creek and approximately 3.5 miles east of the City of Plano in Collin County, Texas; major amendment, Permit No. 10363-001.

NORTHWEST FREEWAY MUNICIPAL UTILITY DISTRICT, c/o Schwartz, Page, & Harding, L.L.P., 1300 Post Oak Blvd., Suite 1400, Houston, Texas 77056; the plant site is located approximately three-fourth (3/4) of a mile north-northwest of the intersection of Becker Road and U.S. Highway 290 in Harris County, Texas; renewal, Permit No. 11913-001.

OXID, L.P., 101 Concrete Street, Houston, Texas 77012; the plant site is located at the southeast corner of the intersection of Loop 610 and the Houston Ship Channel, at 101 Concrete Street, in the City of Houston, Harris County, Texas; renewal, Permit No. 02102.

OXID, L.P., 101 Concrete Street, Houston, Texas 77012; the plant site is located at 101 Concrete Street in the City of Houston, Harris County, Texas; renewal, Permit No. 03243.

SAN ANTONIO WATER SYSTEM, P.O. Box 2449, San Antonio, Texas 78298-2449; the plant site is located approximately 1,300 feet north of the point where U.S. Highway 90 crosses Medio Creek, and approximately 1.25 miles west of Interstate Highway 410 in Bexar County, Texas; renewal, Permit No. 10137-040.

SHELL OIL COMPANY, Westhollow Technology Center, P.O. Box 1380, Houston, Texas 77251-1380; the plant site is located on the east side of State Highway 6, approximately 3,000 feet south of the intersection of State Highway 6 and Farm-to-Market Road 1093 (Westheimer-Beeler Road) in the City of Houston, Harris County, Texas; renewal, Permit No. 01853.

SILVERLEAF RESORTS, INC., 18270 Singingwood Lane, Flint, Texas 75762; the plant site is located approximately 0.5 mile northwest of the intersection of League Line Road and White Oak Drive on Lake Conroe in Montgomery County, Texas; renewal, Permit No. 13417-001.

SOUTH COAST TERMINALS, L.P., 7401 Wallisville Road, Houston, Texas, 77020-3595; the plant site is located at 7401 Wallisville Road in the City of Houston, Harris County, Texas; renewal, Permit No. 03150.

SPRING INDEPENDENT SCHOOL DISTRICT, 16716 Ella Blvd., Houston, Texas 77090-4299; the plant site is located approximately two miles north of Farm to Market (FM) 1960 on Hardy Road at Lemm Road #1 south of the community of Spring, Harris County, Texas; renewal, Permit No. 02483.

SUNBELT FRESH WATER SUPPLY DISTRICT, 730 Little York Road, Houston, Texas 77076; the plant site is located immediately north of Mooney Road and east of Halls Bayou in Harris County, Texas; renewal, Permit No. 10236-001.

CITY OF SUNSET, P.O. Box 197, Sunset, Texas 76270; the wastewater treatment facilities and disposal site will be located approximately 1,000 feet north northwest of the intersection of U.S. Highway 287 and State Highway 101 West, west of the City of Sunset, in Montague County, Texas; new, Permit No. 13952-001.

TEXAS UTILITIES ELECTRIC COMPANY, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411; the plant site is located on the north bank of Big Brown Reservoir (Fairfield Lake) on Farm to Market (FM) 2570 and 11 miles northeast of the City of Fairfield, Freestone County, Texas; renewal, Permit No. 01309.

U.S. DEPARTMENT OF THE AIR FORCE AND LOCKHEED MARTIN TACTICAL AIRCRAFT SYSTEMS, P.O. Box 748, MZ

6875; the plant site is located on the south shore of Lake Worth, approximately seven miles west of downtown Fort Worth; bordered on the east by Carswell Air Force Base, and on the west and south by the City of White Settlement, Tarrant County, Texas; major amendment, Permit No. 01764.

CITY OF WOODVILLE, 113 North Charlton, Woodville, Texas 75979; the plant site is located approximately 1,000 feet east of U.S. Highway 69 and 3,000 feet south of U.S. Highway 190 in Tyler County, Texas; major amendment, Permit No. 10322-001.

TRD-9811548

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 22, 1998



### 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 Agreed Orders (AOs) pursuant to the Texas Water Code (TWC), §7.075. Section 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the Texas Register not later than the 30th day before the date on which the public comment period closes, which in this case is August 29, 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 29, 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: Arturo Arrendondo dba Art's Conoco; DOCKET NUMBER: 96-1598-PST-E; TNRCC ID NUMBER: 55665; Location: San Antonio, Bexar County, Texas; TYPE OF FACILITY: retail gas station; RULES VIOLATED: Texas Water Code, §26.121 by allowing a discharge of pollution into or adjacent to the waters of the state; 30 TAC §334.50(b)(1)(A) by failing to provide proper release detection for underground storage tank (UST) systems; 30 TAC §334.50(b)(2)(A) by failing to monitor pressurized piping in a UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.51(b)(2)(C) by failing to provide proper overflow prevention equipment for UST systems; and 30 TAC §334.522(a) by failing to pay annual facility fees for its USTs; PENALTY: \$25,400; STAFF ATTORNEY: Hodgson Eckel, Litigation

Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042.

(2)COMPANY: Garland Paul Bourg, Sr. and Sue Ann Bourg, dba Circle G Dairy and Bourg Dairy; DOCKET NUMBER: 96-1972-AGR-E; TNRCC ID NUMBER: 03327; LOCATION: Rio Vista, Johnson County, Texas; TYPE OF FACILITY: dairy facility; RULE VIOLATED: Texas Water Code, §26.121 by discharging waste and wastewater into or adjacent to waters in the State of Texas without authorization from the TNRCC. At the time of the July 17, 1996, inspection by the TNRCC Arlington Regional investigator, a tractor with a power take-off driven pump was backed up to a concrete pit which collects barn flush and wastewater. The TNRCC investigator collected samples of the waste for analysis. The TNRCC investigator documented that Respondents pumped waste into a ditch that enters the Nolan River approximately three-quarters to one mile west of the Facility; 30 TAC §321.35(a) by failing to construct adequate facilities to retain waste; TNRCC Permit Number 03327, Special Provision Number 10.b, by failing to maintain records of waste disposal; TNRCC Permit Number 03327, Special Provision Number 11, by failing to provide soil sample analysis results; TNRCC Permit Number 03327, Special Provision 14, by failing to provide written notice to the TNRCC Enforcement Division, Water Section, and to the TNRCC Arlington Regional Office at least 45 days prior to the completion of the waste management facility or operation of the facility; TNRCC Permit Number 03327, Special Provision Number 19, by failing to furnish a Texas Registered Professional Engineer's certification that the facilities had been constructed in accordance with the TNRCC Permit 03327; TNRCC Permit Number 03327, Special Provision Number 22, by failing to have waste management facilities constructed by January 1, 1992; TNRCC Permit Number 03327, Standard Provision Number 2, by failing to give verbal notice of the discharge to the TNRCC Arlington Regional Office within 24 hours of the discharge and by failing to give written notice to the TNRCC executive director of the discharge within five working days of the discharge; and TNRCC Permit Number 03327, Special Provision Number 17, by failing to locate and certify that all wells located on the Facility property, and all wells located off-site of the Facility which were within 150 feet of the irrigation and/or soils disposal sites, were cased if producing or plugged if non-producing; PENALTY: \$28,880; STAFF ATTORNEY: Mary Risner, Litigation Support Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Ethyl Corporation; DOCKET NUMBER: 95-0462-IWH-E; TNRCC ID NUMBER: 30465; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing facility; RULES VIOLATED: 30 TAC §305.64 by changing ownership or operational control without prior authorization from the TNRCC; 30 TAC §335.152(a)(5) by failing to obtain approval for subsequent amendments to a closure plan that had previously been approved by the TNRCC; Compliance Plan Provision Number III. C.9. by failing in its 1990 or 1993 semi-annual reports to include changes in top of casing elevation for wells; and TNRCC Permit Number HW-50156, Provision Number VII. E. by failing to measure and record total depth in Monitor Wells Numbers MW-40 through MW-45 in 1990; PENALTY: \$22,080; STAFF ATTORNEY: Lisa Selton Dyar, Litigation Support Division, MC 175, (512) 5692; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9811560  
Kevin McCalla  
Director, Legal Division

Texas Natural Resource Conservation Commission  
Filed: July 22, 1998

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### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed 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 29, 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 29, 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: Ed Bullion; DOCKET NUMBER: 97-1167-MSW-E; TNRCC ID NUMBER: 12062; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: municipal solid waste storage, processing, and disposal facility; RULES VIOLATED: 30 TAC §330.4(a) by failing to obtain a permit or other authorization from the TNRCC to operate as a municipal solid waste storage, processing, and disposal facility; 30 TAC §330.5(d) by burning municipal solid waste at the Facility without authorization by the commission or executive director; and 30 TAC §330.5(a)(2) and (3) by creating and maintaining a nuisance with the emission of odors at the Facility, and endangering human health and welfare of the environment; PENALTY: \$6,250; STAFF ATTORNEY: Ali Abazari, Litigation Support Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2)COMPANY: Linda Daniels dba Sandy Creek Marina; DOCKET NUMBER: 97-0889-PWS-E; TNRCC ID NUMBER: 1870087; LOCATION: Lington City, Polk County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.106(a)(1) by failing to prepare a plan showing the sites at

which samples will be collected for bacteriological analysis; 30 TAC §290.112(1) by failing to maintain bacteriological sample results for a period of five years; 30 TAC §290.46(n) by failing to maintain an up-to-date map of the distribution system; 30 TAC §290.46(m) by failing to initiate a program to facilitate cleanliness and improve the general appearance of all plant facilities; 30 TAC §290.42(e)(4)(D) by failing to provide facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; 30 TAC §290.46(y) by failing to ensure that all water system electrical wiring is installed in a securely mounted conduit in compliance with a local or national electrical code; 30 TAC §290.43(c)(2) by failing to equip the water storage tank with a cover that overlaps and terminates in a downward direction for at least two inches with arrangements for keeping it locked in place; 30 TAC §290.43(c)(3) by failing to provide the ground storage tank with a properly designed overflow pipe which terminates with a gravity-hinged weighted cover; 30 TAC §290.43(c)(4) by failing to provide the water storage tank with a satisfactory means, properly protected from a sanitary standpoint, of easily determining the amount of water in storage; 30 TAC §290.43(e) by failing to provide a properly constructed intruder-resistant fencing around the facility; 30 TAC §290.46(p) by failing to inspect ground storage and pressure tanks on an annual basis; 30 TAC §290.43(d)(2) by failing to provide the pressure tank with a pressure release device; 30 TAC §290.43(d)(3) by failing to provide the pressure tank with facilities for maintaining the air-water volume at the design water level and working pressure; 30 TAC §290.42(e)(5) by failing to provide an adequate full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation; 30 TAC §290.42(e)(5) by failing to provide a small bottle of fresh ammonia to test for possible chlorine leakage; 30 TAC §290.42(e)(2) by failing to have the chlorine application point on the well discharge line ahead of the ground storage; 30 TAC §290.46(f)(2)(B) by failing to perform a chlorine residual test in the far reaches of the distribution system, at least once every seven days; 30 TAC §290.45(b)(1)(C)(I) by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iii) by failing to provide a service pump capacity of 2.0 gallons per minute per connection; 30 TAC §290.41(c)(3)(M) by failing to provide a sampling tap on each well discharge to facilitate the collection of samples for chemical and bacteriological analysis directly from the well; 30 TAC §290.41(c)(1)(F) by failing to protect the system's facilities by a 150-foot radius sanitary control easement prohibiting all septic tanks within 50 feet of the well and open-jointed drain fields within a 150-foot radius of each well; and 30 TAC §290.106(a)(2) and Texas Health and Safety Code, §341.033(d) by failing to collect bacteriological samples for the months of April 1996, June 1996, October 1996, November 1996, February 1997, August 1997, and September 1997; PENALTY: \$7,655; STAFF ATTORNEY: (Bill) Il Hyun Jang, Litigation Support Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(3)COMPANY: Marshall Kline dba Turn Key Trailers; DOCKET NUMBER: 97-1146-AIR-E; TNRCC ID NUMBER: CP0357J; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: trailer sales and rental site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b) by failing to obtain an air quality permit and/or failing to meet the conditions of a permit exemption prior to construction and operating a spray paint operation; PENALTY: \$4,000; STAFF ATTORNEY: (Bill) Il Hyun Jang, Litigation Support Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9811551

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 22, 1998

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is August 30, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 30, 1998. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Amoco Pipeline Company; DOCKET NUMBER: 98-0135-AIR-E; IDENTIFIER: Account Number HX-1680-I; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: crude oil pipeline meter station; RULE VIOLATED: 30 TAC §101.4 and the THSC, §382.085(a) and (b), by discharging air contaminants from a pipeline leak of crude oil at the Genoa Junction pipeline metering station and during the remediation of this site in such concentration and of such duration as were or may have tended to be injurious to or 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: \$12,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: Chevron USA Products Company; DOCKET NUMBER: 98-0279-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0050102; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum storage tank retail facility; RULE VIOLATED: 30 TAC §115.246(6) and the THSC, §382.085(b), by failing to maintain a log of daily inspections to ensure proper operation of the Stage II vapor recovery system; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Jason Ybarra, (713)



767-3615; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3)COMPANY: The City of Azle; DOCKET NUMBER: 98-0025-MWD-E; IDENTIFIER: Permit Number 11183-003; LOCATION: Azle, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11183-003 and the Code, §26.121, by exceeding the permitted daily average limit of 15 milligrams per liter (mpl) for total suspended solids from May through December 1997; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: The City of Goree; DOCKET NUMBER: 97-1113-MWD-E; IDENTIFIER: Permit Number 10102-001; LOCATION: Goree, Knox County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §325.2(b), by failing to employ a wastewater operator with a valid certificate of competency; 30 TAC §305.125(5), by failing to operate and maintain all facilities and systems of treatment properly at all times; and 30 TAC §319.11(b), by failing to take pH measurements within 15 minutes of sample collection; PENALTY: \$6,875; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 209 South Danville, Suite B200, Abilene, Texas 79605-1491, (915) 698-9674.

(5)COMPANY: The City of West Tawakoni; DOCKET NUMBER: 98-0114-MWD-E; IDENTIFIER: Permit Number 11331-001; LOCATION: West Tawakoni, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11331-001 and the Code, §26.121, by failing to comply with the total suspended solids daily average concentration permit limit of 15 mpl and the biochemical oxygen demand daily average concentration permit limit of ten mpl; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: DSI Transports, Incorporated; DOCKET NUMBER: 97-1074-AIR-E; IDENTIFIER: Account Number JE-0013-X; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: tanker truck cleaning plant; RULE VIOLATED: 30 TAC §115.132(a) and the Act, §382.085(b), by operating a volatile organic compound (VOC) and water separator that was not enclosed, covered, or utilizing a vapor recovery system; and 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by operating a transport vessel cleaning and degassing facility without first obtaining a TNRCC air quality permit or satisfying the conditions of a permit exemption; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(7)COMPANY: Francisco Orozco dba Guanajuato Auto Sales; DOCKET NUMBER: 98-0180-AIR-E; IDENTIFIER: Account Number DB-4659-C; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.50(e)(1) and the Act, §382.085(b), by issuing motor vehicle inspection certificates to three motor vehicles without testing the exhaust emissions; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8)COMPANY: R. C. McBryde Oil Company; DOCKET NUMBER: 97-0909-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 001620; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: retail gasoline station; RULE VIOLATED: 30 TAC §334.54(d)(1)(B), by failing to properly upgrade or permanently remove from service underground storage tanks (USTs)

which have been temporarily out of service for longer than 12 months; 30 TAC §334.7(e)(2), by failing to accurately fill out a tank registration form that has been dated and signed by the owner or the owner's designated representative and submitted to the executive director; 30 TAC §334.72, by failing to report to the commission a suspected release from a UST within 24 hours of its discovery; 30 TAC §334.48(c), by failing to conduct effective inventory control procedures for all USTs at a retail service station, regardless of which method of release detection is used for compliance with 30 TAC §334.50 (relating to Release Detection); and the Code, §26.121(a)(1), by failing to prohibit unauthorized discharges or activities which cause, continue to cause, or will cause pollution of any water in the State of Texas; PENALTY: \$8,320; ENFORCEMENT COORDINATOR: Randy Norwood, (512) 239-1879; REGIONAL OFFICE: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903-6326, (915) 655-9479.

(9)COMPANY: Victor M. Ashe dba Shady Oaks Mobile Home Community and RV Park; DOCKET NUMBER: 98-0019-MWD-E; IDENTIFIER: Enforcement Identification Number 11978; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §285.3(d)(1) and the Code, §26.121, by operating the facility without a required permit and by allowing unauthorized discharges of wastewater; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(10)COMPANY: The Texas Department of Criminal Justice; DOCKET NUMBER: 98-0198-MWD-E; IDENTIFIER: Permit Number 11180-002; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11180-002 and the Code, §26.121, by failing to comply with the daily average five-day carbonaceous biochemical oxygen demand permit limit of ten mpl; the Code, §26.135(h), by failing to pay water quality assessment fees; the Code, §5.102, 5.103, 5.105, 5.120, 26.0291(b)(c), and 26.040, by failing to pay wastewater inspection fees; 30 TAC §334.128, by failing to pay aboveground storage tank fees; the THSC, §361.131 - 361.139, by failing to pay generation fees for hazardous and nonhazardous waste; the THSC, §341.041, by failing to pay the public health service fees; the THSC, §361.013 and §361.014, by failing to pay waste management beneficial land use permit fees; the THSC, §341.034, by failing to pay waterworks operator certification fees; and the THSC, §381.037(i), by failing to pay conference and seminar fees; PENALTY: \$0; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11)COMPANY: Texas Plasticote, A Subsidiary of Pipeline Seal & Insulator, Incorporated; DOCKET NUMBER: 98-0253-AIR-E; IDENTIFIER: Account Number HX-1472-R; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: pipeline equipment manufacturing plant; RULE VIOLATED: 30 TAC §115.421(a)(9)(A)(iii) and the THSC, §382.085(b), by delivering surface coating having more than 3.5 pounds per gallon VOC content to its metal parts and products application system; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12)COMPANY: Woodcrest Mobile Home Park, Incorporated; DOCKET NUMBER: 97-0059-MWD-E; IDENTIFIER: Enforcement Identification Number 8391; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by

failing to submit a permit renewal application and by allowing an unauthorized discharge of wastewater; and the Code, §26.0291 and §26.0135(h), by failing to pay waste treatment inspection fees and water quality assessment fees; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-9811472

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 21, 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 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the Texas Register not later than the 30th day before the date on which the public comment period closes, which in this case is August 29, 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 29, 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: Arturo Arrendondo dba Art's Conoco; DOCKET NUMBER: 96-1598-PST-E; TNRCC ID NUMBER: 55665; Location: San Antonio, Bexar County, Texas; TYPE OF FACILITY: retail gas station; RULES VIOLATED: Texas Water Code, §26.121 by allowing a discharge of pollution into or adjacent to the waters of the state; 30 TAC §334.50(b)(1)(A) by failing to provide proper release detection for underground storage tank (UST) systems; 30 TAC §334.50(b)(2)(A) by failing to monitor pressurized piping in a UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.51(b)(2)(C) by failing to provide proper overfill prevention equipment for UST systems; and 30 TAC §334.522(a) by failing to pay annual facility fees for its USTs; PENALTY: \$25,400; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042.

(2)COMPANY: Garland Paul Bourg, Sr. and Sue Ann Bourg, dba Circle G Dairy and Bourg Dairy; DOCKET NUMBER: 96-1972-AGR-E; TNRCC ID NUMBER: 03327; LOCATION: Rio Vista, Johnson County, Texas; TYPE OF FACILITY: dairy facility; RULE VIOLATED: Texas Water Code, §26.121 by discharging waste and wastewater into or adjacent to waters in the State of Texas without authorization from the TNRCC. At the time of the July 17, 1996, inspection by the TNRCC Arlington Regional investigator, a tractor with a power take-off driven pump was backed up to a concrete pit which collects barn flush and wastewater. The TNRCC investigator collected samples of the waste for analysis. The TNRCC investigator documented that Respondents pumped waste into a ditch that enters the Nolan River approximately three-quarters to one mile west of the Facility; 30 TAC §321.35(a) by failing to construct adequate facilities to retain waste; TNRCC Permit Number 03327, Special Provision Number 10.b, by failing to maintain records of waste disposal; TNRCC Permit Number 03327, Special Provision Number 11, by failing to provide soil sample analysis results; TNRCC Permit Number 03327, Special Provision 14, by failing to provide written notice to the TNRCC Enforcement Division, Water Section, and to the TNRCC Arlington Regional Office at least 45 days prior to the completion of the waste management facility or operation of the facility; TNRCC Permit Number 03327, Special Provision Number 19, by failing to furnish a Texas Registered Professional Engineer's certification that the facilities had been constructed in accordance with the TNRCC Permit 03327; TNRCC Permit Number 03327, Special Provision Number 22, by failing to have waste management facilities constructed by January 1, 1992; TNRCC Permit Number 03327, Standard Provision Number 2, by failing to give verbal notice of the discharge to the TNRCC Arlington Regional Office within 24 hours of the discharge and by failing to give written notice to the TNRCC executive director of the discharge within five working days of the discharge; and TNRCC Permit Number 03327, Special Provision Number 17, by failing to locate and certify that all wells located on the Facility property, and all wells located off-site of the Facility which were within 150 feet of the irrigation and/or soils disposal sites, were cased if producing or plugged if non-producing; PENALTY: \$28,880; STAFF ATTORNEY: Mary Risner, Litigation Support Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Ethyl Corporation; DOCKET NUMBER: 95-0462-IWH-E; TNRCC ID NUMBER: 30465; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing facility; RULES VIOLATED: 30 TAC §305.64 by changing ownership or operational control without prior authorization from the TNRCC; 30 TAC §335.152(a)(5) by failing to obtain approval for subsequent amendments to a closure plan that had previously been approved by the TNRCC; Compliance Plan Provision Number III. C.9. by failing in its 1990 or 1993 semi-annual reports to include changes in top of casing elevation for wells; and TNRCC Permit Number HW-50156, Provision Number VII. E. by failing to measure and record total depth in Monitor Wells Numbers MW-40 through MW-45 in 1990; PENALTY: \$22,080; STAFF ATTORNEY: Lisa Selton Dyar, Litigation Support Division, MC 175, (512) 5692; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9811552

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 22, 1998



### Proposal for Decision

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 Max Kunz; SOAH Docket No.582-98-0565; TNRCC Docket No.97-0229-IHW-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

Issued in Austin, Texas on July 21, 1998

Eugenia K. Brumm, Ph.D., Chief Clerk, Texas Natural Resource Conservation Commission.

### Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on July 17, 1998 on Executive Director's Preliminary Report Assessing Administrative Penalties and Requiring Certain Actions of Gibson Recycling, Inc.; SOAH Docket No.582-97-1890; TNRCC Docket No.97-0254-MSW-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9811549

Douglas A. Kitt

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: July 22, 1998



### Public Notice

The Texas Natural Resource Conservation Commission (TNRCC or the Commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the "Act"), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these sites was published in the May 22, 1998, issue of the Texas Register (23 TexReg 5523-5524).

Pursuant to §361.184 (a), the Commission must publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list a facility on the state registry of state Superfund sites. This is a notice of a facility or area that the executive director of the TNRCC has determined eligible for listing, and which the executive director proposes to list on the state registry. Also specified is the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. The notice of intent to list this facility was published in the Llano News on July 30, 1998.

The Kingsland site is located from the 900-block of Farm Road 1431 northwest to its intersection with Farm Road 2545, in Llano County, Texas. The approximate geographic coordinates of the site are Latitude 30 40' 00" N, Longitude 98 26' 00 W". There are several possible sources of releases, including businesses along Farm Road 1431. Releases of hazardous substances, such as organic solvents, to the groundwater is the major concern at the site.

A public meeting may be requested regarding the proposed listing of the Kingsland site on the state registry. The public meeting must be requested by submitting a written request by 5:00 p.m., August 31, 1998. Interested parties may submit a written request for a public meeting or may submit written comments to the Commission relative to the proposed listing of the Kingsland site to the attention of Carol Boucher, TNRCC, Remediation Division, P.O. Box 13087 MC-143, Austin, Texas 78711-3087; telephone (800) 633-9363 (within Texas only) or (512) 239-2501.

If a public meeting is requested regarding the proposed listing of this facility on the state registry, the Commission shall publish general notice of the date, time, and location of the public meeting in the Texas Register and in the Llano News . The public meeting notice shall be provided not later than the 31st day before the date of the meeting. If a public meeting is requested, it will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Government Code, Chapter 2001).

The executive director of the TNRCC prepared a brief summary of the Commission's records regarding this site. This summary, and a portion of the records for the site, is available for inspection and copying at the Kingsland Branch Library, 125 W. Polk, Kingsland, Texas 78639-5908, (915) 388-3170, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the TNRCC, Central Records Center, Building D, Room 190, 12100 Park 35 Circle, Austin, Texas 78753; telephone (800) 633-9363 (within Texas only) or (512) 239-2920. Copying of file information is subject to payment of a fee.

TRD-9811559

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 22, 1998



## North Central Texas Council of Governments

### Requests for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

North Central Texas Council of Governments intends to select a consultant firm to conduct a multimodal travel pattern analysis for Dallas Area Rapid Transit (DART). The selected consultant will work closely with the Planning and Development Division of DART to conduct data collection and analysis to identify travel patterns of the users of the DART system and to quantify the number of passengers who constitute those patterns.

**Due Date:** Proposals must be submitted no later than 5:00 p.m. (central time) on Friday, August 7, 1998, to Ms. Julie Dunbar, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals (RFP), contact Diane Griffin, (817) 695-9287.

**Contract Award Procedures:** The firm selected to perform this study will be recommended by a Project Review Committee (PRC). The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

**Regulations:** The NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantage business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-9811214

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: July 16, 1998



This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

North Central Texas Council of Governments intends to select a consultant firm to study the City of Denton's transit system. The purpose of this project is to assist NCTCOG in analyzing the barriers that have prevented establishment of transit service beyond current boundaries and in recommending transit service improvements within the present service area and Denton County.

**Due Date:** Proposals must be submitted no later than 5:00 p.m. (central time) on Friday, August 14, 1998, to Mr. Patrick Tyner, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals (RFP), contact Diane Brostuen, (817) 695-9240.

**Contract Award Procedures:** The firm selected to perform this study will be recommended by a Project Review Committee (PRC). The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

**Regulations:** The NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantage business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-9811602

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: July 16, 1998



**Public Utility Commission of Texas**

**Applications 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 15, 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 of Rate Reduction of MaxiMizeremph: type-name="supe"TM 800 Services Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 19608.

The Application: SWBT filed an application to reduce the MaxiMizeremph: type-name="supe"TM 800 rates for the Per Minute and the Two Hour and Five Hour Block of Time Plans. Rates for the Per Minute Plan will be reduced from the present \$ .20 per peak minute and \$ .18 for off-peak minute of use to \$ .15 per minute of use for either peak or off-peak. The Two Hour Block Plan's monthly charge is reduced from the current \$21.60 to \$15.00 and the additional minute's rate changes from \$ .17 to \$ .125. The Five Hour Block Plan's monthly charge is reduced from \$45.00 to \$30.00 and the additional minute's rate changes from \$ .14 to \$ .10. All other MaxiMizeremph: TM 800 rates and features will remain the same.

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 August 6, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811464

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 20, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 15, 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 SmartTrunk Service Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 19609.

The Application: SWBT filed an application to institute promotional rates for SmartTrunk Service customers ordering SmartTrunk Interfaces between September 1, 1998 and November 27, 1998. During the promotional period, SmartTrunk service customers ordering new SmartTrunk Interfaces will receive a waiver of the non-recurring installation charge associated with SmartTrunk Service. In order to receive the non-recurring charge waiver, customers must purchase a 36 month or longer contract.

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 August 6, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811465

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



### Notice of Application for Approval of Certain Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 14, 1998, for approval of certain depreciation rates pursuant to §§52.002- 52.003, §52.252, and §53.056, 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 Kerrville Telephone Company, Inc. for an Increase in Certain Depreciation Rates Pursuant to P.U.C. Substantive Rule §23.61(h). Docket Number 19600.

The Application: Kerrville Telephone Company, Inc. (Kerrville) requests approval to increase certain depreciation rates to receive full capital recovery of the following accounts: furniture, office support equipment, general purpose personal computers, general purpose mainframe computer, circuit equipment, poles, aerial cable-metallic, underground cable-metallic, underground cable-fiber, buried cable-metallic, buried cable-fiber, intrabuilding aerial cable- metallic, intrabuilding underground cable, intrabuilding underground cable-fiber, intrabuilding buried cable-metallic. Kerrville provides service in the Texas counties of Gillespie, Kerr, and Kimble. Kerrville proposes an effective date of January 1, 1998 for these increased rates.

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 14, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811348  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 17, 1998



### Notice of Applications for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on July 10, 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 Excel Telecommunications, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19597 before the Public Utility Commission of Texas.

Applicant intends to provide all forms of telecommunications services on a resale basis, including, basic residential exchange services, residential custom and class features, basic business exchange services, business custom calling and class features, adjunct provided features, and business and residential ancillary services.

Applicant's requested SPCOA geographic area includes all local exchange companies (LECs) that are not now, or that cease to be, subject to competitive protection as a small or rural LEC pursuant to 48 U.S.C. §251(f).

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 August 5, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811199  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 15, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 14, 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 FirstLink Communications, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19601 before the Public Utility Commission of Texas.

Applicant intends to provide basic local exchange services, plus resold long distance along with unregulated services such as Internet, enhanced service features and cable and/or alarm services.

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 August 5, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811245  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 16, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 17, 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 Dakota Services Limited for a Service Provider Certificate of Operating Authority, Docket Number 19621 before the Public Utility Commission of Texas.

Applicant intends to provide specialized digital communications technologies for local exchange services and interexchange service to customers.

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 August 5, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811509  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 21, 1998



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

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Shell Oil Company in Houston, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Shell Oil Company in Houston, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19603.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Shell Oil Company in Houston, 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 Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811200  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 15, 1998



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 an addition to the existing PLEXAR-Custom service for Fort Worth Independent School District (ISD) in Fort Worth, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Fort Worth ISD in Fort Worth, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19604.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Fort Worth ISD in Fort Worth, 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 Fort Worth 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-9811201  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 15, 1998



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 an addition to the existing PLEXAR-Custom service for Schertz Cibolo Universal City Independent School District (ISD) in Schertz, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Schertz Cibolo Universal City ISD in Schertz, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19612.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Schertz Cibolo Universal City ISD in Schertz, 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 San Antonio exchange, and the geographic market for this specific PLEXAR-Custom service is the San Antonio 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-9811463  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



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 an addition to the existing PLEXAR-Custom service for Aldine Independent School District (ISD) in Houston, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Aldine ISD in Houston, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19613.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Aldine ISD in Houston, 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 Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811462  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



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 Corpus Christi Independent School District (ISD) in Corpus Christi, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-Custom Service for Corpus Christi ISD in Corpus Christi, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19614.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Corpus Christi ISD in Corpus Christi, 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 Corpus Christi exchange, and the geographic market for this specific PLEXAR-Custom service is the Corpus Christi 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-9811461  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



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 Texas Commission on Fire Protection in Austin, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-Custom Service for Texas Commission on Fire Protection in Austin, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19632.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Texas Commission on Fire Protection in Austin, 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 Austin exchange, and the geographic market for this specific PLEXAR-Custom service is the Austin 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-9811508  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 21, 1998



Notice of Public Hearing Relating to Continuity of Service for Electric Utilities

The Public Utility Commission of Texas will conduct a public hearing in rulemaking Project Number 19198, Continuity of Service (for electric utilities), pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at 9:00 a.m. on Thursday, August 13, 1998. This public hearing will be conducted in the commissioners' hearing room located on the seventh floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701.

The public hearing will focus on proposed rule §25.52 relating to Continuity of Service as published in the June 12, 1998 *Texas Register* (23 TexReg 6115).

If you have any questions in regards to this proceeding, contact Mel Eckhoff, Office of Regulatory Affairs, at (512) 936-7348.

TRD-9811512  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 21, 1998



Public Notices of Amendment to Interconnection Agreements

On July 8, 1998, Southwestern Bell Telephone Company and Winstar Wireless of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of §15 and §47, United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19424. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing

clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19424. 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 10, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19424.

TRD-9811458  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



On July 8, 1998, Southwestern Bell Telephone Company and Winstar Wireless of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of §15 and §47, United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19587. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any

interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19587. 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 10, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19587.

TRD-9811460  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



On July 9, 1998, Southwestern Bell Telephone Company and Kingsgate Telephone, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of §15 and §47, United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19611. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.



The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19611. 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 10, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19611.

TRD-9811459  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 1998



#### Public Notices of Interconnection Agreements

On July 7, 1998, 360 Communications Company (360 Comm) 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 19581. 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 19581. 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 21, 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 19581.

TRD-9811346  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 17, 1998



On July 14, 1998, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and Omni- Prism 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 19602. 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 19602. 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 21, 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 19602.

TRD-9811347  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 17, 1998

## San Antonio-Bexar County Metropolitan Planning Organization

### Request for Proposal

The San Antonio—Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to perform an audit of expenditures of funds provided by the United States Department of Transportation (USDOT) and the Texas Department of Transportation (TxDOT).

The MPO will award a contract to conduct the audit for three consecutive fiscal years: 1997-98, 1998-99, 1999-00. The estimated amount of funding for this contract is \$30,000 and is contingent upon the availability of Federal Transportation Planning Funds. The audit will be performed in accordance with the requirements of the Office of Management and Budget Circular A-133.

The contract award will be made by the MPO Transportation Steering Committee; however, the MPO reserves the right to reject any and all proposals.

Individuals or agencies interested in submitting a proposal should request a copy of the Request for Proposal (RFP) from Janet A. Kennison, Administrator, at (210) 227-8651, 603 Navarro, Suite 904, San Antonio, Texas 78205.

Closing date for accepting proposals is 12:00 p.m. (CDT), Friday, August 28, 1998.

TRD-9811511  
Janet A. Kennison  
Administrator  
San Antonio—Bexar County Metropolitan Planning Organization  
Filed: July 21, 1998

## Texas Tech University

### Request for Proposals

Texas Tech University requests proposals from professional firms interested in representing Texas Tech University and its component members in certain tax matters.

DESCRIPTION: Texas Tech University is supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, grants, gifts, sponsored research and other sources of revenues, all of which may be impacted by the Internal Revenue Code and regulations of the Internal Revenue Service. For assistance with such issues, Texas Tech University will engage outside counsel for review of and advice regarding tax matters as they relate to higher education including but not limited to the following: retirement programs, unrelated business income tax; personal income tax issues

as they relate to donors; and Federal and State tax matters regarding compensation issues and nonresident alien tax issues.

Texas Tech University invites proposals in response to this RFP from qualified firms for the provision of such legal and tax services under the direction and supervision of the Texas Tech University Office of General Counsel.

**RESPONSES:** Responses to this RFP should include at least the following: a description of the firm's or attorney's qualifications for performing legal services, including the firm's prior experience in tax-related matters and retirement plans as they relate specifically to institutions of higher education; the names and experience of the attorneys who will 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; the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform such services in relation to Texas Tech University federal tax matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; 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; disclosures of conflicts of interests (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 Texas Tech University or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and confirmation of willingness to comply with policies, directives, and guidelines of Texas Tech University and the Attorney General of the State of Texas. Qualified firms must be able to exhibit compliance with House Bill No. 1, 75th Legislature, Regular Session, Article IX, Section 59 concerning matters against the State of Texas or any of its agencies.

**FORMAT AND PERSON TO CONTACT:** Three copies of the proposal are requested. The proposal should be typed, preferably double-spaced on, 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "RESPONSE TO REQUEST FOR PROPOSAL" and addressed to Patricia Aldridge, Director of Contracting, Texas Tech University, P.O. Box 41101, Lubbock, Texas 79409-1101.

**Evaluation:** Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria are expertise, availability of a lead attorney, prior experience in handling tax-related matters relating to higher education, procedures for providing timely and cost-effective services, and reasonableness of fees. Although the fee structure and overall cost of this representation will be an extremely important factor in evaluating proposals submitted in response to this RFP, the successful firm will clearly demonstrate exceptional expertise and experience with the tax matters made the subject of this RFP.

Proposals must remain firm as to services and prices for 90 days. No proposals will be accepted by oral communication, electronic mail, telegraphic transmission or telefacsimile transmission.

Proposers are requested to submit a standard form used to retain their services if available.

**DEADLINE FOR SUBMISSION OF RESPONSE:** All proposals will be received by the Office of Contracting at Texas Tech University at the address set forth above no later than 3 p.m. August 31, 1998.

**PROPOSAL DELIVERY and TIME AND DATE:** Proposals received after August 31, 1998, 3:00p.m. CST will be returned unopened. Address proposals to:

Patricia Aldridge  
Director of Contracting

327 Drane Hall

15th and University

P.O. Box 41101

Lubbock, Texas 79409-1101

phone (806) 742-3841

fax (806) 742-0350

TRD-9811541

James L. Crowson

Assistant Secretary to the Board

Texas Tech University

Filed: July 22, 1998

◆ ◆ ◆  
Texas Tech University (TTU) and Texas Tech University Health Sciences Center (TTUHSC) request information from law firms interested in representing TTU/TTUHSC in tax-exempt bond matters. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 1998 to August 31, 1999) a referral list from which TTU/TTUHSC, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters as the need arises. These needs include the usual and necessary services of a bond counsel in connection with the issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

**Description.** Tax-exempt bonds and notes are issued by the Board of Regents of Texas Tech University (the "Board"), acting separately and independently for and on behalf of TTU and TTUHSC. Public, tax-exempt bond issuance is conducted under two major programs and is rated by three major rating agencies. Bonds are issued under authority granted in Article VII, Section 17, of the Texas Constitution (Higher Education Assistance Fund Bonds). A \$50 million commercial paper program for Higher Education Assistance Fund (HEAF) bonds is planned for the 1999 fiscal year. A fixed rate bond sale is also anticipated. Under authority granted in Chapter 55, Texas Education Code and Vernon's Texas Civil Statutes, Articles 717k and 717q, and other applicable laws, TTU anticipates issuing revenue bonds for capital improvements. A \$100 million tax-exempt commercial paper program (with initial authority of \$50 million) is to be used for interim financing with long term fixed rate bonds sold to provide more permanent financing. TTU employs a revenue bond program which offers a combined pledge of all legally available revenues with certain exceptions (the "Revenue Financing System"). Federal tax related matters regarding bonds issued by TTU, including strategies and management practices in the conduct of an exempt bond program requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to HEAF and RFS commercial paper programs due to the significant level of capital improvements anticipated over the next several years. TTU invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of TTU's Office of General Counsel.

**Responses.** Responses to this RFI should include at least the following information: (1) a description of the firm's or attorneys' qualifications for performing the legal services, including the firm's

prior experience in bond issuance matters, the names, experience, and technical expertise of attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; (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 TTU's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) 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 TTU or the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials). Qualified firms must be able to exhibit compliance with House Bill No. 1, 75th Legislature, Regular Session, concerning matters against the State of Texas or any of its agencies; and (4) confirmation of willingness to comply with policies, directives and guidelines of TTU 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, either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Information" and addressed to Ms. Patricia Aldridge, Director of Contracting and Risk Management, Texas Tech University, 327 Drane Hall, Lubbock, Texas 79409-1101 (telephone (806) 742-3841 for questions).

Deadline for Submission of Response: All responses must be received by the TTU's Office of Contracting and Risk Management at the address set forth above no later than 5:00 p.m., Friday, August 21, 1998.

TRD-9811546  
James L. Crowson  
Assistant Secretary to the Board  
Texas Tech University  
Filed: July 22, 1998

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## Texas Department of Transportation

### Notice of Availability of FEIS

Notice of Availability of FEIS: In accordance with Title 43, Texas Administrative Code, §2.43, the Texas Department of Transportation is giving public notice of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of the Loop 49 (South Section) roadway facility around the city of Tyler in Smith County, Texas.

The proposed project consists of the construction of a controlled access freeway facility from State Highway 155 east to State Highway 110, a distance of 15.5 kilometers (9.6 miles). The proposed Loop 49 facility will consist of a four-lane divided roadway with both parkway and freeway sections depending on the surrounding existing land use. Three alternatives, in addition to the no-build alternative, have been presented in the FEIS for this project. All three alternatives lie between State Highway 155 and State Highway 110 in an east-west direction, but differ in their proximity to the city of Tyler. Alternative A was identified as the Technically Preferred Alternative. Alternative A is the alternative closest to Tyler and is 15.48 kilometers (9.62 miles) in length. Alternative B lies outside Alternative A and is 16.74 kilometers (10.4 miles) in length. Alternative C lies the farthest from

the City of Tyler and is approximately 18.44 kilometers (11.5 miles) long.

The proposed Loop 49 freeway is intended to alleviate traffic congestion on existing roadways in urbanized Smith County; to provide a safer, more convenient route for traffic traveling through the Tyler area; and to increase mobility and provide access (including improved emergency service access) to the southern Tyler/Smith County area. The social, economic, and environmental impacts of the Loop 49 project have been analyzed in the FEIS.

Copies of the FEIS and other information about the project may be obtained at the Texas Department of Transportation Tyler District Office located at 2709 West Front Street, Tyler, Texas 75702. For further information, please contact Wesley G. McClure, P.E., at (903) 510-9224. Copies of the FEIS may also be reviewed at the University of Texas at Tyler Library, Tyler Junior College Library, the office of the Smith County Judge, the Tyler Metropolitan Planning Organization, East Texas Council of Governments, and the Tyler Metropolitan Chamber of Commerce.

TRD-9811373  
Bob Jackson  
Acting General Counsel  
Texas Department of Transportation  
Filed: July 20, 1998

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### Request for Proposal: Patent Law Matters

The Texas Department of Transportation (the "department") requests proposals from law firms interested in representing the department in patent law matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (the "commission") on specific patent applications. Selection of outside counsel will be made by the department's executive director.

Description: The department is a state agency granted powers under Transportation Code, Section 201.205 to apply for, register, secure, hold, and protect patents. Transportation research activities and related pursuits produce design processes and other intellectual property that are carefully evaluated for protection and for licensing to governmental and commercial entities. The department will engage outside counsel to prepare, file, and prosecute applications to patent the department's current and possible future innovations. The department invites responses to this RFP from qualified firms for the provision of patent legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in patent law. Extensive prior experience in providing legal services related to patent law is required.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing patent prosecution, developing patent applications, and obtaining patents, the names, experience, education, and scientific or technical expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to

the capabilities and resources of the firm's Texas offices, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) 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 Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

**Format and Person to Contact:** Eight copies of the proposal are requested. The proposal 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 or delivered in person, marked "Response to Request for Proposal" and addressed to Charles W. Heald, P.E., Executive Director, Texas, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone Jennifer Soldano, Associate General Counsel at (512) 463-8630.

**Deadline for Submission of Response:** All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., August 28, 1998.

TRD-9811588  
Bob Jackson  
Acting General Counsel  
Texas Department of Transportation  
Filed: July 22, 1998



## **Texas Commission on Volunteerism and Community Service**

### **Notice of Request for Proposals**

The Texas Commission on Volunteerism and Community Service issues a Request for Proposals (RFP) for the purpose of subgranting funds to organizations to establish and maintain community-based service-learning demonstration projects. The projects should address the goals of the Texas Unified State Plan and at least one of the five goals as presented by the Presidents' Summit for America's Future and the Texas Challenge. These goals include a caring adult, a safe place, a marketable skill, a healthy start and an opportunity to give back through service. The successful proposers will be expected to begin performance of the one-year, renewable contract on or about October 30, 1998.

**Eligible Proposers:** The Texas Commission on Volunteerism and Community Service will consider proposals from community-based organizations and public or private non-profit entities.

**Contact:** Interested parties should fax a one page request for an RFP to (512)463-1861, to be received no later than 12 noon CST, August 21, 1998. The request should include organization name, contact

person, address, and phone number. Contact Kevin Schantz at (512) 936-3587 for more information. The RFP will be available on July 31, 1998, or as soon thereafter as possible.

Proposers must send at least one agent or employee to a mandatory information session to be held on September 1, 1998 in Austin, Texas. Location and time of the session will be included in the RFP.

**Closing Date:** Proposals must be received by the Texas Commission on Volunteerism and Community Service no later than 5:00 p.m. CST on Friday, October 2, 1998. Hand deliveries should be delivered to 1700 North Congress, Room 310, Austin, Texas 78701. Mailed proposals should be sent to P.O. Box 13385, Austin, TX 78711-3385. Proposals received after 5:00 p.m. CST on Friday, October 2, 1998 will not be considered.

**Award Procedures:** Proposals will be subject to evaluation based on the requirements as set forth in the RFP. The Texas Commission on Volunteerism and Community Service will make the final decision as to which proposal or proposals best satisfy the RFP's criteria.

The Texas Commission on Volunteerism and Community Service reserves the right to accept or reject any or all proposals submitted. The Texas Commission on Volunteerism and Community Service is under no legal obligation to execute a contract on the basis of this notice or the distribution of any RFP. In addition, the Texas Commission on Volunteerism and Community Service reserves the right to vary the provisions set forth in the RFP any time prior to the execution of a contract when such variance is deemed to be in the best interest of the Texas Commission on Volunteerism and Community Service. Neither this notice nor the RFP commits the Texas Commission on Volunteerism and Community Service to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: issuance of RFP - July 31, 1998; mandatory information session - September 1, 1998; proposals due - October 2, 1998 at 5:00 p.m. CST; contract execution - October 30, 1998, or as soon thereafter as possible.

TRD-9811562  
J. Ferris Duhon  
Assistant General Counsel  
Texas Commission on Volunteerism and Community Service  
Filed: July 22, 1998



## **Texas Workers' Compensation Commission**

### **Notice to Vendors**

Training vendors interested in becoming approved curriculum vendors for the Texas Workers' Compensation Commission's Designated Doctor Program to provide mandatory training for designated doctors and/or health care providers performing the Range of Motion, Strength, or Sensory Testing for the designated doctor exam can obtain application information by calling Michele Claire Johnson, Coordinator, Designated Doctor Education, Medical Review Division, (512) 440-3842.

The Texas Workers' Compensation Commission will review completed applications (with required documentation attached) after the deadline for submission which is close of business on September 1, 1998.

TRD-9811557  
Susan M. Cory  
General Counsel  
Texas Workers' Compensation Commission

Filed: July 22, 1998



## Texas Workforce Commission

### Notice of Public Hearing

The Texas Workforce Commission (Commission) will conduct a PUBLIC HEARING on the proposed Food Stamp Employment and Training Rules to receive comments on the proposed rules published in the *Texas Register*. The hearing will be at:

2:30 P.M.

August 11, 1998 at

101 East 15th Street

6th Floor, Room 644

Austin, Texas 78778

Persons wishing to present comments at the public hearing may do so by advising the Commission of their intent prior to the hearing date with correspondence addressed to Ms. Jean Mitchell, 101 E. 15th Street, Room 504BT, Austin, Texas 78778, or by completing a

registration form which will be available at the entrance to Room 644 on the day of the public hearing.

Speakers are encouraged to provide written copies of their comments. While any person with relevant comments will be provided an opportunity to present them during the hearing, the Commission reserves the right to restrict statements in terms of time or repetitive content.

Persons needing special accommodations or having any questions should contact Ms. Mitchell at the above address, or by phone at (512) 463-2654.

A complete copy of the proposed rules may be obtained on the Internet at the following website: <http://www.sos.state.tx.us/texreg/July311998>

TRD-9811432

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: July 20, 1998



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