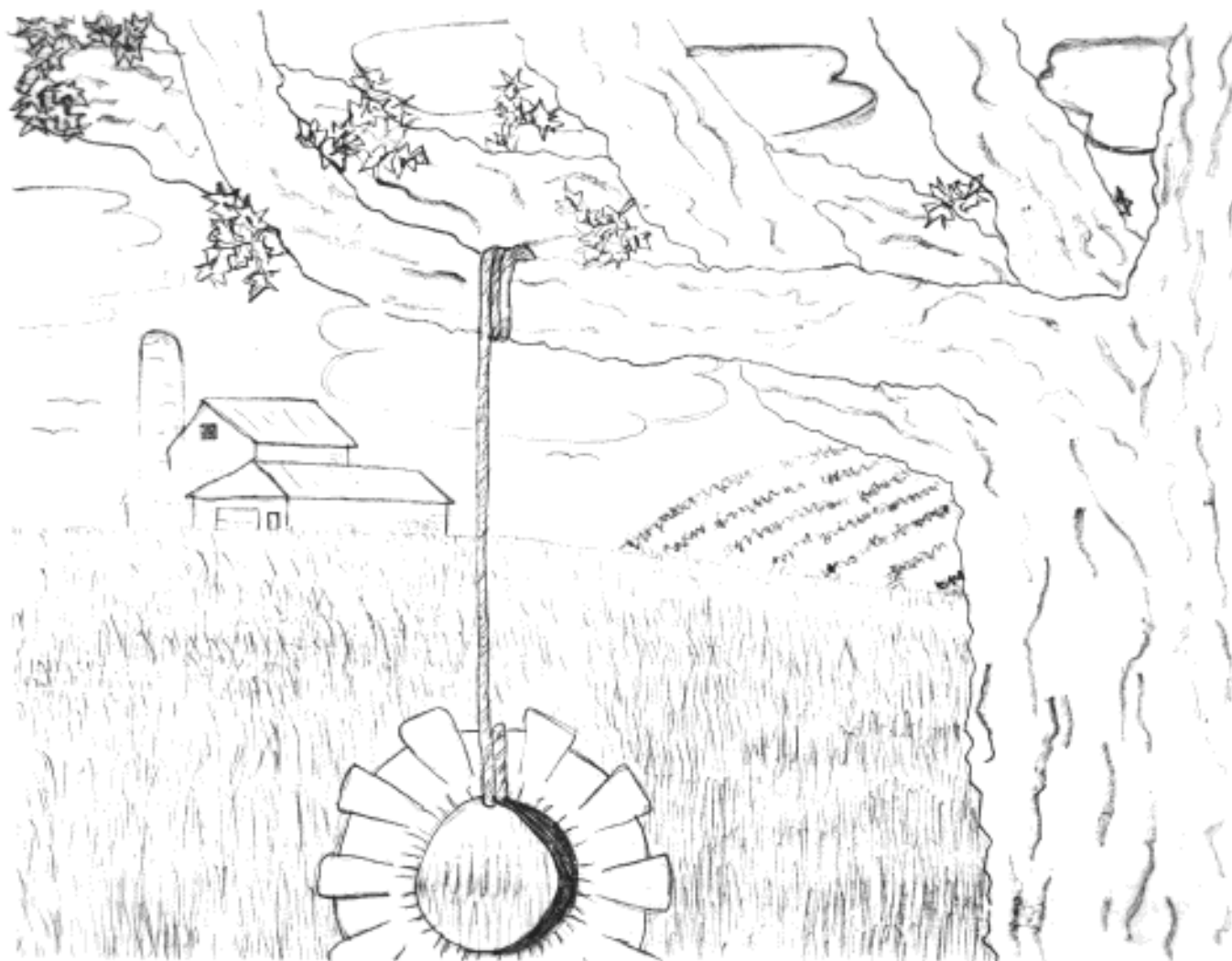


# TEXAS REGISTER

*Volume 23 Number 36 September 4, 1998*

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***Artist: Marilyn Kocurek***

***7th Grade***

***China Spring Middle School***

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# OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

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## Opinions

**DM-480.** Request from Ms. Carolyn Purcell, Executive Director, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711-3564, concerning whether, under Government Code §551.126, a governmental body must recess or adjourn a meeting held by videoconference call if technical difficulties render portions of the meeting inaccessible to the public at a remote location, and related question.

**SUMMARY** Under Government Code section 551.126, a governmental body must recess or adjourn an open meeting conducted via videoconference call if technical difficulties cause the quality of the audio or video signal to fall below the standards set by the Department of Information Resources. The governmental body cannot avoid this result by notifying the public that, should technical difficulties occur, the quorum of the governmental body will continue its open meeting.

**DM-481(RQ-978).** Request from The Honorable Teel Bivins, Chair, Senate Education Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether Education Code section 51.306, which requires basic skills test for students at public universities, may be applied to students at proprietary schools.

**SUMMARY** Section 51.306 of the Education Code, which requires each undergraduate student who enters a public institution of higher education to take and pass the Texas Academic Skills Program Test, or "TASP test," does not authorize the Texas Higher Education Coordinating Board to require students enrolled in a proprietary school to pass the TASP test as a condition of obtaining a degree. However, we believe that a court would find that the coordinating board's power under section 132.063 of the Education Code to approve a degree at a proprietary school reasonably includes the authority to require proprietary school students to pass the TASP test as a condition of obtaining a degree.

TRD-9813578

## Requests for Opinions

**RQ-1162.** Request from Ms. Eliza May, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716, concerning reciprocal licensure by the Texas Funeral Service Commission..

**RQ-1163.** Request from the Honorable Jerry Patterson, Chair, Committee on Veteran Affairs and Military Installations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning authority of a county appraisal district to declare optional the public notice requirement of the Tax Code, section 41.70.

**RQ-1164.** Request from the Honorable Tom Maness, Jefferson County Criminal District Attorney, P.O. Box 2553, Beaumont, Texas 77704, concerning whether an employee of a regional planning commission may simultaneously serve as an elected member of a port commission.

**RQ-1165.** Request from Mr. Barry R. McBee, Chair, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, concerning constitutionality of section 361.0235, Health and Safety Code, which bans the importation of hazardous waste from outside the United States.

**RQ-1166.** Request from Mr. Wayne Thorburn, Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, concerning applicability of Chapters 37 and 39, Business and Commerce Code, to residential service companies, real estate brokers, and real estate sales persons licensed by the Texas Real Estate Commission.

**RQ-1167.** Request from the Honorable Jerry Patterson, Chair, Committee on Veteran Affairs and Military Installations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether

the legislature may authorize a state agency to construe article XVI, section 50(e), Texas Constitution, the home equity amendment.

**RQ-1168.** Request from the Honorable Mark Piland, Mitchell County Attorney, 49 Oak Street, Room 206, Colorado City, Texas 79512, concerning residency requirement for a deputy county clerk.

**RQ-1169.** Request from the Honorable Glen Wilson, Parker County Attorney, One Courthouse Square, Weatherford, Texas 76086, concerning whether a constable is required to attend sessions of a justice court.

**RQ-1170.** Request from the Honorable Harvey Hilderbran, Chair, Human Services Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a personal care facility may provide nursing services to its residents.

**RQ-1171.** Request from the Honorable Rob Hofmann, Mason County Attorney, P.O. Box 157, Mason, Texas 76856, concerning whether a commissioners court may accept a donation to improve a road.

**RQ-1172.** Request from Ms. Deborah Hammond, LMSW-ACP, Chair, Texas State Board of Social Worker Examiners, 1100 West 49th Street, Austin, Texas 78756-3183, concerning whether the State Board of Social Worker Examiners may relicense individuals whose licenses have lapsed.

**RQ-1173.** Request from the Honorable Cindy Maria Garner, 349th Judicial District of Texas, P.O. Box 1076, Crockett, Texas 75835, concerning constitutionality of a municipal juvenile curfew ordinance.

**RQ-1174.** Request from Mr. Charles L. Dunlop, Executive Director, Teacher Retirement System, 1000 Red River, Austin, Texas 78701-2698, concerning permissible investments of the Teacher Retirement System, and related questions.

TRD-9813503



#### Letter Opinions

**LO-98-059(RQ-1082).** Request from The Honorable Gonzalo Barrientos, Chair, Committee of the Whole on Legislative and Congressional Redistricting, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Texas Crime Stoppers Advisory Council is an advisory committee subject to automatic abolition pursuant to Government Code section 2110.008.

**SUMMARY** The Texas Crime Stoppers Advisory Council is not an advisory committee subject to automatic abolition under Government Code section 2110.008.

**LO-98-060(RQ-1114).** Request from The Honorable Ben W. Bud Childers, Fort Bend County Attorney, 301 Jackson, Suite 621, Richmond, Texas 77469-3108, concerning whether proceeds of bonds approved by voters for improvements to a city's existing civic center may be used for construction of a new civic and convention center and related questions.

**SUMMARY** Proceeds of bonds approved by the voters for improvements to a city's existing civic center may not be used for construction of a new civic and convention center unless approved by the voters at a subsequent election held for that purpose pursuant to Texas Civil Statutes, Articles 703a or 703b.

**LO-98-061(RQ-1127).** Request from The Honorable Edmund Kuempel, Chair, Committee on State Recreational Resources, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, con-

cerning whether the Daughters of the Republic of Texas is subject to the Open Meetings Act, Chapter 551, Government Code.

**SUMMARY** The Daughters of the Republic of Texas is a private corporation that acts as trustee for the Alamo on behalf of the state of Texas. It is not a "governmental body" under the terms of the Open Meetings Act, Government Code chapter 551.

**LO-98-062(RQ-1129).** Request from The Honorable Jerry Patterson, Chair, Committee on Veteran, Affairs & Military Installations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Industrial Development Corporation of the City of League City may expend Article 5190.6, section 4B tax proceeds to fund the maintenance and operating costs of a project.

**SUMMARY** Under Texas Civil Statutes, Article 5190.6, section 4B(a-2), section 4B tax proceeds may not be used to pay for maintenance and operating costs of a project unless the city publishes notice of this proposed use. If the proposed use is challenged by a petition of more than 10 percent of the voters within 60 days of the notice, the City of League City will be required to hold an election to obtain voter approval of the proposed use because such use has not been approved in a prior election.

**LO-98-063(RQ-1085).** Request from Mr. Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning whether two independent school districts may negotiate the purchase and sale of surplus school buses without competitive bidding, without the participation of the General Services Commission.

**SUMMARY** Two independent school districts may not contract between themselves for the purchase of surplus school buses of a value in excess of \$20,000 by one from the other without competitive bidding except by carrying out the transaction through the General Services Commission.

**LO-98-064(RQ-947).** Request from Mr. Andrew Sansom, Executive Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, concerning whether the Franklin County Water District may require a fishing guide licensed by the Texas Parks and Wildlife Department to pay a fee and obtain a permit from the district before operating as a fishing guide on Lake Cypress Springs, and related questions.

**SUMMARY** A water conservation and reclamation district holds the waters, bed, and piscatorial inhabitants of a lake created by damming a navigable waterway in trust for the people of Texas.

The Franklin County Water District is unauthorized to collect a fee for the privilege of operating as a fishing guide on Lake Cypress Springs or for holding a fishing tournament on the lake.

To the extent of inconsistency between the Wildlife Conservation Act, Parks and Wildlife Code chapter 61, and Water Code section 51.127(4), the Wildlife Conservation Act prevails. Thus, the Texas Parks and Wildlife Department has sole authority to regulate the taking and possession of fish, such as the periods of time when one may take or possess fish and the means, methods, and places for taking or possessing fish. Water District rules that purport to regulate the means of taking fish are ultra vires.

Nevertheless, the Franklin County Water District may regulate business privileges on the lake. Accordingly, district rules that require fishing guides and the organizers of a fishing tournament to obtain a permit are, on their face, within the district's jurisdiction (although the district may not exact a fee for the permit). Finally, the district may limit the number of boats that participate in a fishing tournament

if the district has found that the limitation is necessary to protect the public safety.

**LO-98-065(RQ-982).** Request from Ms. Rachelle Martin, Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, concerning definition of "management search consultant" in Texas Civil Statutes, Article 5221a-7, section 1(11).

**SUMMARY** So long as a personnel firm acts as an employer's agent, rather than an employee's, and receives compensation only from the employer, the fact that the bargain the firm strikes between the parties is of mutual benefit to both of them does not take the firm out of the definition of management search consultant contained in section 1(11) of Texas Civil Statutes, Article 5221a-7.

**LO-98-066(RQ-962).** Request from The Honorable Barry S. Green, District Attorney, 271st Judicial District, Wise County Courthouse, Suite 200, Decatur, Texas 76234, concerning proper forum for filing affidavit to surrender bond principal.

**SUMMARY** For purposes of article 17.19 of the Code of Criminal Procedure, which allows a bail bondsman who wishes to surrender his principal to do so by filing an affidavit of such intention "before the court or magistrate before which the prosecution is pending," the prosecution is pending before the court or magistrate who received a complaint, or the court to which proceedings are subsequently transferred.

**LO-98-067(RQ-992).** Request from The Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio Street, Box 1,

Pearsall, Texas 78061-3100, concerning whether a justice of the peace must deposit the fee collected under Transportation Code section 543.106 with the county treasury, and related questions.

**SUMMARY** A justice of the peace may not deposit any county funds, including fees collected under Transportation Code section 543.106, into an account separate from the county treasury. Instead, a justice must deposit fees collected under Transportation Code section 543.106 in the county treasury. In a county that pays its justices of the peace on the salary basis, the treasurer in turn must deposit the fees into either the county's salary fund to the credit of the collecting justice or, if the county commissioners court has properly ordered it, into the county's general fund. The commissioners court ultimately controls the use of the fees. The commissioners court need not budget a line item for to permit the justices of the peace to perform administrative duties associated with Transportation Code Chapter 543, subchapter B because those duties are imposed upon the justice's office by statute. Fees collected under Transportation Code section 543.106 may be used to pay only that portion of the salaries and expenses authorized in Local Government Code section 154.023(a) that are incurred in administering Transportation Code Chapter 543, subchapter B.

TRD-9813594



# EMERGENCY RULES

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

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

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board

#### Chapter 363. Financial Assistance Programs

The Texas Water Development Board (the board) adopts on an emergency basis amendments to 31 TAC §§363.2, 363.17, 363.704, 363.713, and 363.721 and new §§363.81-363.88 and §363.715 concerning Grants for Emergency and the Small Community Emergency Loan Program.

These sections are adopted on an emergency basis to provide grants and short-term loans to community water and wastewater systems in need of emergency assistance due to the extreme drought conditions throughout the State. Based upon discussions at the August 7, 1998 joint hearing of the Senate Finance Committee and the House Committee on Appropriations, the Board has been asked to take the steps necessary to be able to provide emergency grants and loans through existing programs for drought-threatened water systems.

The Board finds that as a result of drought conditions, there is an imminent threat to public health and safety and that without financial assistance made possible through amendments to the Board rules, an interruption of water services could result.

#### Subchapter A. General Provisions

##### Division 1. Introductory Provisions

###### 31 TAC §363.2

The amendment is adopted on an emergency basis under the Texas Water Code, Chapter 6, Section 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board. The emergency rule will be effective for 120 days from date of filing.

###### §363.2. 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 Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant - a political subdivision or subdivisions which file an application with the board for financial assistance or associated actions.

(2) Board - Texas Water Development Board.

(3) Building - Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(4) Closing - The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(5) Commission - Texas Natural Resource Conservation Commission.

(6) Commitment - An action of the board evidenced by a resolution approving a request for financial assistance from any loan program account.

(7) Corporation - A nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 as amended (Article 1434a, Vernon's Texas Civil Statutes).

(8) Debt - All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

(9) Department - Texas Department of Health.

(10) Economically distressed areas - For the purposes of §§363.81-363.88 of this title (relating to General Provisions), an area in which water supply or sewer services are or are expected to be inadequate to meet minimal needs of residential users and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs.

(11) Emergency - For the purposes of §§363.81-363.88, a condition in which a public water or wastewater system has already failed or which poses an imminent threat of failure, causing the health or safety of residential users to be in danger. The emergency shall be the result of natural or man-made catastrophes, riots, or hostile military or paramilitary action, including such conditions recognized by a declaration of disaster by the governor of the State.

(12) Escrow - The transfer of funds to a custodian of the funds which will act as the escrow agent or trust agent.

(13) Escrow agent - The third party appointed to hold the funds which are not eligible for release to the loan recipient.

(14) Escrow agent bank - The financial institution which has been appointed to hold the funds which are not eligible for release to the loan recipient.

(15) Executive administrator - the executive administrator of the board or a designated representative.

(16) Financial assistance - Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15; Subchapters B, C, E, and J, Chapter 16; Subchapters E and F, and Chapter 17; Subchapters D, F, G, I, and K.

(17) Grants for Emergency - For the purposes of §§363.81-363.88, financial assistance by the board pursuant to Texas Water Code, Chapter 15, Subchapter C as provided by state appropriations and/or federal funds.

(18) Innovative technology - nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

(19) Release - The time at which funds are made available to the loan recipient.

(20) Trust agent - The party appointed by the applicant and approved by the executive administrator of the board to hold the funds which are not eligible for release to the loan recipient.

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

TRD-9813280

Suzanne Schwartz  
General Counsel

Texas Water Development Board

Effective date: August 20, 1998

Expiration date: December 18, 1998

For further information, please call: (512) 463-7981



## Division 2. General Application Procedures

### 31 TAC §363.17

The amendment is adopted on an emergency basis under the Texas Water Code, Chapter 6, Section 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board. The emergency rule will be effective for 120 days from date of filing.

*§363.17. Water Loan Assistance Fund.*

The board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

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

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) (No change.)

(2) sewer services:

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

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) (No change.)

(3) (No change.)

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7981



## Division 7. Grants for Emergency

### 31 TAC §§363.81-363.88

The new sections are adopted on an emergency basis under the Texas Water Code, Chapter 6, Section 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board. The emergency rules will be effective for 120 days from date of filing.

*§363.81. Grants for Emergency.*

Grants for emergencies may be provided by the board from the Water Loan Assistance Fund to political subdivisions for projects that address the interruption of water or wastewater service due to an emergency and which serve an economically distressed area.

*§363.82. Terms of Financial Assistance.*

The board shall determine the amount and form of grants for emergencies. The amount of grants shall be limited to the amount necessary to restore service or ensure the uninterrupted delivery of service.

*§363.83. Application.*

An applicant shall submit an application in the form and numbers prescribed by the executive administrator. The executive administrator may request additional information needed to evaluate the application and may return any incomplete applications.

*§363.84. Applicability.*

The provisions of §363.12 of this title (relating to General, Legal and Fiscal Information), the engineering information of §363.711(b)(2) of this title (relating to Applications), and the preliminary environmental information of §363.711(b)(3) shall apply to applications for grant assistance under this subchapter.

*§363.85. Findings of the Board.*

The board, by resolution, may approve an application for an emergency grant if the board finds:

(1) that an emergency exists; and

(2) that the public interest requires state participation in the project.

*§363.86. Grant Agreement.*

The applicant will execute a grant agreement that sets out the terms and requirements pursuant to which a grant for the emergency will be awarded. These conditions and requirements will include the term of the grant commitment, closing conditions, conditions for environmental approvals, and standards for engineering design approvals.

*§363.87. Environmental Review before Board Approval.*

Board staff will use preliminary environmental data provided by the applicant, as specified in §363.711(b)(3) of this title (relating to Applications), and make a written report to the executive administrator on known or potentially significant social or environmental concerns. The executive administrator may recommend approval of the project to the board if, based on preliminary information, there appear to be

no significant environmental, permitting, or social issues associated with the project. The grant agreement will provide the terms and conditions for completion of the environmental review process.

§363.88. Release of Funds.

Funds will be released in accordance with the terms of the executed grant agreement. The timing on release of funds will take into consideration the applicant's need for funds to initiate and complete the project in an expeditious manner.

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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 G. Small Community Emergency Loan Programs

### Division 1. Introductory Provisions

#### 31 TAC §363.704

The amendment is adopted on an emergency basis under the Texas Water Code, Chapter 6, Section 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board. The emergency rule will be effective for 120 days from date of filing.

§363.704. Eligibility Requirements.

An applicant must meet all of the following requirements to be eligible for financial assistance under this subchapter:

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

(3) Emergency. An emergency must exist that meets the criteria of subparagraphs (A)-(D) or (E) of this paragraph.

(A)-(D) (No change.)

(E) A condition of drought must exist that poses a threat to public health and safety if not addressed immediately.

(4) Timing. The emergency must have been first discovered by the political subdivision no more than six months prior to the date the application is received by the board, unless the emergency is a condition of drought.

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7981



### Division 2. Application Procedures

#### 31 TAC §363.713, §363.715

The new section and the amendment are adopted on an emergency basis under the Texas Water Code, Chapter 6, Section 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board. The emergency rules will be effective for 120 days from date of filing.

§363.713. Board Consideration of Application.

~~[Unless special circumstances warrant an extension, a recommendation to approve or reject the loan request will be prepared for board consideration within three (3) working days of submittal of a completed application.]~~ The application will be scheduled on the agenda for board consideration at the earliest practical date and, if warranted, the board may hold an emergency board meeting.

§363.715. Notes and Loan Agreements

(a) The board may provide financial assistance to political subdivisions by either purchasing bonds issued by the political subdivision or by purchasing a note and entering into a loan agreement with the political subdivision. If a political subdivision utilizes the note and loan agreement, the term of the loan shall not be more than one year.

(b) If a political subdivision executes a note and loan agreement with the board, the political subdivision is not required to engage the services of a bond counsel or a financial advisor.

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Suzanne Schwartz

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7981



### Division 3. Closing and Release of Funds

#### 31 TAC §363.721

The amendment is adopted on an emergency basis under the Texas Water Code, Chapter 6, Section 6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board. The emergency rule will be effective for 120 days from date of filing.

§363.721. Loan Closing.

(a) Loan documents shall be executed at the time of closing and shall include the following:

(1)-(10) (No change.)

(11) that the political subdivision issuing bonds, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the political subdivision's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the political subdivision's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12; and



(12) (No change.)

(b) Closing Requirements. A political subdivision entering into a note and loan agreement shall be required to execute the note and loan agreement as a condition of closing. A political subdivision issuing bonds shall be required to comply with the following closing requirements:

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

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TRD-9813286  
Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
Effective date: August 20, 1998  
Expiration date: December 18, 1998  
For further information, please call: (512) 463-7981



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part XX. Texas Workforce Commission

#### Chapter 800. General Administration

#### Subchapter B. Allocations and Funding

#### 40 TAC §800.56

The Texas Workforce Commission (Commission) adopts on an emergency basis amendments to §800.56, concerning Child Care Services.

The purpose of the amendments is to utilize the federal poverty level indicators instead of the state median income levels as the mechanism for targeting At-Risk children for child care services in areas of desperate need.

The language in §800.56(c) and (f) is changed from "75% of the state median income" to "150% of the federal poverty guidelines."

The "federal poverty guidelines" are formally referenced as "the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services under authority of §673(2) of the Omnibus Budget Reconciliation Act of 1981."

The "state median income" is published in the 1990 US Census Data, which contains the 1989 median family income data.

The use of the 75% of the state median income level instead of 150% of the federal poverty guidelines to determine allocations to local workforce development areas results in a shifting of funds away from areas of the state that have substantial numbers of children living below or near the poverty level. Use of the state median income level instead of the federal poverty guidelines could result in parents leaving employment to care for children or having to leave their children in unsafe situations, such as unsupervised care, in order to maintain employment. For this reason, the use of the state median income level presents an imminent peril to the public health, safety or welfare of the children of the state.

Randy Townsend, Chief Financial Officer, 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 rule as amended;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule as amended;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule as amended;

There are no foreseeable implications relating to costs or revenue of the state or local government as a result of enforcing or administering the rule as amended; and

There are no probable economic costs to persons required to comply with the rule as amended.

Charlotte Brantley, Director of Child Care/Work and Family Clearinghouse, has determined that:

There is no anticipated adverse impact on small businesses as a result of enforcing or administering the amendments because the local workforce development boards are recipients of funds and small businesses are not required to do anything to comply with the rule as amended; and

For each year of the first five years that the amendments will be in effect, the public benefit expected as a result of the adoption of the amendments is that the amendments will ensure that children living below or near the poverty level have increased access to child care funding.

The emergency amendments are adopted under Texas Labor Code, §301.061 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs.

The emergency amendments affect Texas Labor Code Title 4, particularly Chapters 301 and 302.

#### §800.56. Child Care Services.

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

(c) For At-Risk child care, funds will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~] residing within the workforce area to the statewide total number of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~], and

(2) an adjustment for average net unit rates for At-Risk child care.

(d)-(e) (No change.)

(f) For locally matched initiatives for child care and quality improvements, funds will be allocated among workforce areas on the basis of the relative proportion of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~] residing within the workforce area to the statewide total of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~].

(g)-(j) (No change.)

Filed with the Office of the Secretary of State, on August 18, 1998.

TRD-9813120

J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

Effective date: August 18, 1998

Expiration date: December 16, 1998

For further information, please call: (512) 463-8812



# 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 13. CULTURAL RESOURCES

### Part II. Texas Historical Commission

#### Chapter 24. Restricted Cultural Resource Information

13 TAC §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19, 24.21, 24.23

The Texas Historical Commission proposes new §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19, 24.21, and 24.23 concerning public access to cultural resource information contained within our libraries, files, and databases. To protect fragile properties, particularly those subject to looting and vandalism, the commission will withhold information about the location and character of such properties from the general public. The chapter is proposed to define public and restricted cultural resource information, establish criteria for access to restricted data, and outline the registration procedures required for access to and use of the information held by the commission in its libraries, files, documents, maps, and contained in the Texas Historic Sites Atlas (THSA) database.

Curtis Tunnell, Executive Director, has determined that for the first five-year period the sections as proposed are in effect, there may be some limited fiscal implications for state or local governments as a result of enforcing or administering this section of rules. These costs (a subscription fee) would only be incurred by those agencies that seek and are qualified for access to restricted cultural resource information contained within the THSA database.

Mr. Tunnell also anticipates that the public will benefit from information access limitations intended to protect fragile cultural resources from trespass or destruction. These rules establish a procedure that the commission must follow in order to grant access to the restricted cultural resource data held by the commission. There may some limited costs for some members of the public as a result of enforcing or administering this section of rules in the form of a subscription fee for those individuals that desire and are qualified for access to restricted information contained within the THSA database.

Comments on the proposal may be submitted to Dr. Daniel Julien, Director of the THSA Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276.

The rules are proposed under Section 442.005(q) of the Texas Government Code and Section 191.052 of the Texas Natural Resources Code, which authorizes the Texas Historical Commission to promulgate rules for its programs.

These rules implement Section 442.007(f) of the Texas Government Code and Section 191.004(a-c) of the Texas Natural Resources Code.

#### §24.1. Object.

The Texas Historical Commission, hereafter referred to as the commission, is specifically empowered to adopt reasonable rules and regulations concerning access to Restricted Cultural Resource Information (RCRI) contained within the Texas Historic Sites Atlas (THSA) database, and the libraries, documents, maps, and files of the commission. Implementation of registration procedures for public access to and use of this restricted information is the objective of this chapter.

#### §24.3. Scope.

The intent of these rules is to restrict access to specific cultural resource data to those individuals that have a legitimate scientific or legal interest in obtaining and using that information. The intent is not to limit the public's use of all information that the commission has within its libraries, files, documents, and the THSA database; however, as provided for in Section 442.007(f) of the Texas Government Code, and Section 191.004(a-c) of the Texas Natural Resources Code, the commission can determine what cultural resource information is sensitive and what information needs to be restricted due to potential dangers to those resources. The cultural resources that the commission considers to be at risk include archeological sites, shipwrecks, certain historic structures and engineering features. Public disclosure of any information relating to the location or character of these resources would increase their risk of harm, theft or destruction. Therefore, this information is defined as restricted and is not subject to public disclosure under state law. Restrictions on who can obtain data and how the data are used is within the legal authority of the commission, and can be defined through the rule-making authority of the commission.

#### §24.5. Compliance with Rules and Regulations.

If a registered user of RCRI fails to comply with any of the rules and regulations of the commission, or any of the terms of an RCRI Access Agreement, or fails to properly conduct database searches, or fails to act in the best interest of the state, the commission may immediately revoke the user's access and notify the user of such cancellation by Internet e-mail or by registered letter, mailed to the last address furnished to the commission by the user. Upon cancellation of access, the user forfeits all rights to the restricted data. Access that has been canceled could be reinstated through the process of re-application as provided for in the application process defined in §24.19 of this title (relating to Restricted Information Application Submission and Review Procedures).

#### §24.7. Definitions.

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

(1) Access account - Confidential transaction record verifying an individual's identity and authority to access the restricted information within the THSA database.

(2) Access agreement - A contract signed or otherwise accepted by all users of RCRI, which states that they agree to comply with the regulations governing the use of RCRI, including the restricted data contained within the THSA database.

(3) Access committee - The RCRI Access Committee. A standing committee composed of the Director of the Archeology Division, the Director of the History Programs Division, the State Archeologist, and the Director of the Texas Archeological Research Laboratory of the University of Texas at Austin, or their designees, which has the authority to determine an applicant's qualification for access to restricted information, and the ability to grant or deny such access.

(4) Applicant - An individual who submits an application request for access to RCRI data sources, including the THSA database.

(5) Application form - The completed information packet filed by an applicant being considered for access privileges to RCRI.

(6) Cultural resource information - Data pertaining to cultural resources, including but not limited to site records, reports, location information, notes, photographs, and maps.

(7) Atlas - The Texas Historic Sites Atlas (THSA).

(8) Cultural resource - A site or place where there is physical evidence of past human activities, such as structures, artifacts or alterations of the natural environment, and which is fifty or more years old.

(9) Curriculum vitae - Brief account of the applicant's career and qualifications.

(10) Database - Information and data contained within a computer, file, or document.

(11) Legitimate scientific or legal interest - An interest based on specific research goals associated with professional archeological, historical, or architectural research as defined in Chapter 191 of the Texas Natural Resources Code, or legal jurisdiction directly related to ownership of sites classified as restricted under this title.

(12) Political subdivision - A political subdivision of the State, as defined in Chapter 191 of the Texas Natural Resources Code.

(13) Site - A cultural resource location containing evidence of either a prehistoric and/or historic occupation, or activity, building, or structure, whether standing, in ruin, or vanished, where

the location itself maintains historical or archeological value regardless of the value of any existing structure.

(14) Site location - Information concerning the location, placement, or locality of a cultural resource.

(15) Site records - All data and information relating to the character, condition, and location of any archeological site or other cultural resource, and all data and information pertinent to collections of material remains. Site records include, but are not limited to, photographs, maps, notes, drawings, site data forms, documents, sound tapes, and computerized data.

(16) State agency - A department, commission, board, office, or other agency, as defined in Chapter 191 of the Texas Natural Resources Code.

(17) Steward - A member of the Texas Archeological Stewardship Network.

(18) Texas Historic Sites Atlas - The computer database documenting historical and archeological sites and properties in the state of Texas, as well as the computer database server on which this information resides and the system that provides access to this database through the Internet.

(19) User - An individual who accesses and uses information contained within the THSA database or within the libraries, files, documents, and maps held by the commission.

#### §24.9. The Texas Historic Sites Atlas.

The THSA is an evolving database of cultural resource information administered by the commission. This database is accessible to the public through the World Wide Web. The THSA contains information on archeological sites, historic structures, engineering features, and industrial sites, as well as digital maps of these site locations.

#### §24.11. Public Information.

As specified under the Texas Open Records Act, all information collected and maintained by the commission that is not specifically exempted from release by either a specific exception to the act (Texas Government Code VTCA §552.101), or by previous statute, constitutional amendment, or rule, is considered public. The vast majority of the data held by the commission is open to the public and is accessible through the commission's libraries, files, and the THSA web site without open records requests.

#### §24.13. Restricted Information.

The following categories of information are hereby defined as Restricted Cultural Resource Information (RCRI).

(1) All archeological site location and site record information that contains longitude and latitude, Universal Transverse Mercator coordinates, or other high resolution geographical map or photographic plottings data, or descriptions that would allow an individual to determine the location of an archeological site.

(2) The address or site location of historic structures or other non-archeological cultural resources nominated for or listed in the National Register of Historic Places or registered as State Archeological Landmarks, if the owner of the property has specifically requested that such information not be distributed to the general public.

(3) The site location of cemeteries determined by the commission to be at risk of harm.

#### §24.15. Access to both Public and Restricted Cultural Resource Information.

All persons desiring to view or use RCRI compiled and maintained by the commission, in its libraries, files, and maps, or within the THSA

database must be approved through the commission's application process as defined in §24.17 and §24.19 of this title (relating to Restricted Information Access Criteria and Application Submission and Review Procedures), and agree to abide by the rules of usage established by an RCRI Access Agreement. No access agreement document is needed for persons wishing to access public information in the THSA database or the libraries or files of the commission if restricted information is not contained within those materials. Persons wishing to view or use the RCRI data must submit a written application supplied by the commission, and sign an RCRI Access Agreement if approved for RCRI access.

§24.17. Criteria for Access to Restricted Information.

(a) Qualified applicants meeting one or more of the following criteria may be granted access by the THSA Program Director:

(1) Meet the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) for Archeology.

(2) Meet the definition of professional archeologist, or principal investigator as defined by Section 26.5 of this title (relating to Practice and Procedure).

(3) Be a member in good standing of the Texas Archeological Stewardship Network.

(b) Applications from persons not meeting the criteria set forth in §24.17(a) of this title (relating to Restricted Cultural Resource Information Access Qualifications) must have a clear and legitimate scientific or legal interest in being granted access to RCRI. Their applications will be reviewed by the access committee, and access will be granted or denied by the committee as specified in §24.19 of this title (relating to Restricted Information Application Submission and Review Procedures).

(c) If an applicant is denied access to RCRI, the applicant may appeal that decision before the commission at one of its regularly scheduled public meetings. Appeals must be submitted in writing to the commission at least 30 days prior to a scheduled meeting of the commission.

§24.19. Restricted Information Application Submission and Review Procedures.

(a) Application forms. All persons requesting access to RCRI must complete and submit the application form provided by the commission. This application form must indicate the type of information to which access is desired, the nature of the proposed research and any special user requirements during access, the name of the person desiring access, when access is needed, and for how long.

(b) Curriculum vitae. To prove his or her credentials for access, an applicant must also submit a current curriculum vitae to the commission, if such a document is not already on file with the commission.

(c) Initial review by the THSA Program Director. The THSA Program Director reviews all applications and vitae for completeness, and will notify the applicant of any additional information required.

(d) Consideration of qualified application. When all required application information has been received and reviewed, the THSA Program Director will either rule on access relative to criteria set forth in §24.17(a) of this title (relating to Restricted Cultural Resource Information Access Qualifications), or forward the application to the access committee. If the applicant is approved for RCRI access under §24.17(a) of this title, the THSA Program Director will notify the applicant of this approval within 10 working days. The access committee will review all applicants for qualification under §24.17(b)

of this title, and the THSA Program Director will notify the applicant of the committee's decision.

(e) Denial of application. If an application is denied, the THSA Program Director will notify the applicant in writing of the reasons for denial. Any appeals of these decisions must be made before the commission at one of its regularly scheduled public meetings.

(f) Access agreement. Once any application has been approved by either the THSA Program Director, access committee, or commission, an access agreement will be forwarded to the applicant. The applicant must then sign the access agreement and return it to the commission. Once received, the THSA Program Director will register the applicant as an RCRI user, and a written notice documenting registration will be forwarded to the registered RCRI user. When appropriate, the commission will also supply the applicant with a THSA Access Account, which will enable the applicant to access the restricted portion of the THSA database. A copy of the access agreement document will be kept on file at the Texas Historical Commission.

(g) The commission may conduct an investigation to verify any information submitted on an application.

(h) False information. If the access committee determines that an applicant provided false information on an application, the committee will take the following actions.

(1) Recommend denial of the application.

(2) Notify the applicant of the information considered to be false and give the applicant a reasonable period of time, not to exceed 30 days, to respond.

(3) If, upon examination of the applicant's response, or failure to respond, the access committee determines that false information was knowingly provided on the application, the access committee may recommend to the commission that the applicant be denied access to RCRI for a period not to exceed two years.

(4) The commission may consider and act on this recommendation, upon due notice to the applicant, at any regular or called meeting of the commission.

§24.21. Memoranda of Understanding and/or Agreement for RCRI Access.

The commission may enter into memoranda of understanding or agreement with state or federal agencies, political subdivisions of the state, private institutions, and/or individuals for the purpose of establishing RCRI access arrangements.

§24.23. Access Committee Procedures.

(a) Access committee. The affirmative vote of a simple majority of the committee members is necessary for any action to be taken. No absence in the membership of the access committee shall impair the ability of the committee to exercise all rights and perform all duties.

(b) Committee meeting schedule. Meetings of the committee are held at the call of the THSA Program Director, or whenever requested by one of the members.

(c) Conflict of interest provision for committee members. Any committee member who has, will have, or later acquires an interest, direct or indirect, in any transaction involving an application scheduled to be reviewed by the committee, or approved by the committee, shall immediately disclose the nature and extent of such interest in writing to the THSA Program Director as soon as he or she has knowledge of such actual or prospective interest. Upon such

disclosure, this member shall not participate in any deliberations or actions by the committee that directly or indirectly affects that transaction or interest.

This 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 August 20, 1998.

TRD-9813232

Curtis Tunnell

Executive Director

Texas Historical Commission

Proposed date of adoption: October 30, 1998

For further information, please call: (512) 463-5711



## Part III. Texas Commission on the Arts

### Chapter 31. Agency Procedures

#### 13 TAC §31.10

The Texas Commission on the Arts proposes to adopt by reference an amendment to §31.10, concerning the application forms and instructions for the Financial Assistance Application Form. The purpose of this amendment is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended September 1998.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, 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 the section.

Mr. Snell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Assistant Director/Programs and Public Partnerships, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§31.10. *Financial Assistance Application Form.*

The commission adopts by reference application form and instructions for the Financial Assistance Application Form as outlined in the Texas Arts Plan as amended September 1998 [1997]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

This 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 August 24, 1998.

TRD-9813432

John Paul Batiste

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: October 4, 1998

For further information, please call: (512) 463-5535



## Chapter 35. Texas Arts Plan

The Texas Commission on the Arts proposes to adopt by reference the repeal of §35.1 and new §35.1, concerning the Texas Arts Plan, which outlines the activities of the Commission. Due to several changes being made to the Texas Arts State Plan, the section is being repealed and replaced.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, 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 the section.

Mr. Snell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Assistant Director/Programs and Public Partnerships, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

#### 13 TAC §35.1

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

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§35.1. *Texas Arts Plan.*

This 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 August 24, 1998.

TRD-9813433

John Paul Batiste

Executive Director

Texas Commission on the Arts  
Earliest possible date of adoption: October 4, 1998  
For further information, please call: (512) 463-5535



The new section is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§35.1. Texas Arts Plan.

The commission adopts by reference the Texas Arts Plan effective September 1998. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

This 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 August 24, 1998.

TRD-9813434  
John Paul Batiste  
Executive Director

Texas Commission on the Arts  
Earliest possible date of adoption: October 4, 1998  
For further information, please call: (512) 463-5535



## Chapter 37. Application Forms and Instructions for Financial Assistance

### 13 TAC §§37.22-37.24, 37.26

The Texas Commission on the Arts proposes to adopt by reference amendments to §§37.22-37.24, and 37.26, concerning the application forms and instructions for the Arts in Education Program - Sponsors, the Texas Touring Arts Program - Company/Artist, and Texas Touring Arts Program - Sponsors. The purpose of these amendments is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended September 1998.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Mr. Snell also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Assistant Director/Programs and Public Partnerships, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas

78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

*§37.22. Application Form and Instructions for Artist-in-Education Program-Artist.*

The commission adopts by reference the application form and instructions for the Artist-in-Education Program-Artist as outlined in the Texas Arts Plan amended to be effective September 1998. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, [~~Capitol Station,~~] Austin, Texas 78711.

*§37.23. Application Form and Instructions for Arts in Education Program - Sponsors.*

The commission adopts by reference application form and instructions for Arts in Education Program-Sponsors as outlined in the Texas Arts Plan as amended September 1998 [~~1997~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

*§37.24. Application Form and Instructions for Texas Touring Arts Program-Company/Artist.*

The commission adopts by reference the application form and instructions for the Texas Touring Arts Program-Company/Artist as outlined in the Addendum to the Texas Arts Plan, amended to be effective September 1998 [~~1997~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

*§37.26. Application Form and Instructions for Texas Touring Arts Program-Sponsors.*

The commission adopts by reference application form and instructions for the Texas Touring Arts Program-Sponsors as outlined in the Texas Arts Plan as amended September 1998 [~~1997~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

This 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 August 24, 1998.

TRD-9813431  
John Paul Batiste  
Executive Director

Texas Commission on the Arts  
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For further information, please call: (512) 463-5535



## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

#### Subchapter H. Telephone



## 16 TAC §23.106

*(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 §23.106 relating to Selection of Telecommunications Utilities. Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.106 will be duplicative of proposed new §26.130 of this title (relating to Selection of Telecommunications Utilities) in Chapter 26 (Substantive Rules Applicable to Telecommunications Service Providers).

Mr. Eric White, 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. White 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. White has also determined that for each year of the first five years the repeal is in effect there will be no impact on employment in the geographic area affected by the repeal of this section.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.106.

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.

§23.106. *Selection of Telecommunications Utilities.*

This 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 August 20, 1998.

TRD-9813268

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 4, 1998

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



## 16 TAC §23.107

*(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 §23.107 relating to Educational Percentage Discount Rates (E-Rates). Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.107 will be duplicative of proposed new §26.216 of this title (relating to Educational Percentage Discounts Rates (E-Rates)) in Chapter 26 (Substantive Rules Applicable to Telecommunications Service Providers).

Ms. Janis Ervin, senior utilities analyst, Telecommunications Industry Analysis Division, 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.

Ms. Ervin 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.

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

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701

N. Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.107.

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.

§23.107. *Educational Percentage Discount Rates (E-Rates).*

This 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 August 20, 1998.

TRD-9813271

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 4, 1998

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



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

### Subchapter F. Regulation of Telecommunications Service

#### 16 TAC §26.130

The Public Utility Commission of Texas (PUC or commission) proposes new §26.130, relating to Selection of Telecommunications Utilities. The proposed new section will replace §23.106 of this title (relating to Selection of Telecommunications Utilities). Proposed new §26.130 will implement the provisions of Texas Senate Bill 253, 75th Legislature, Regular Session (1997), which sets out the manner in which a telecommunications utility is permitted to switch a customer from one telecommunications utility to another in the state of Texas. Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re-adopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has

been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

The only changes in proposed new §26.130 from corresponding §23.106 is to change the section number designation and move the section to Chapter 26, Subchapter F, relating to Regulation of Telecommunications Services; and to delete the definitions in §23.106(c) since these definitions have been moved to §26.5 of this title (relating to Definitions). As a result of deleting the definitions subsection, other subsections designations change.

Mr. Eric White, assistant general counsel, Office of Regulatory Affairs 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. White 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 that customers will be protected from deceptive trade practices in the obtaining of authorizations and verifications used to switch the customer from one telecommunications utility to another. 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. White has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the section.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or re-adopting the rule continues to exist. All comments should refer to Project Number 17709 - §26.130 relating to Selection of Telecommunications Utilities.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, Texas Senate Bill 253, 75th Legislature, Regular Session (1997) which sets out the manner in which a telecommunications utility is permitted to switch a customer from one telecommunications utility to another in the state of Texas.

Cross Index to Statutes: Public Utility Regulatory Act §14.002, SB 253.

#### §26.130. Selection of Telecommunications Utilities.

(a) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long- distance telecommunications utility.

(b) Application. This section, including any reference in this section to requirements in 47 Code of Federal Regulations §64.1100 and §64.1150 (changing interexchange carriers), applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions).

(c) Changes initiated by a telecommunications utility. Before a carrier-initiated change order is processed, the telecommunications utility initiating the change (the prospective telecommunications utility) must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 Code of Federal Regulations §64.1100. In the case of a carrier-initiated change by written solicitation, the prospective telecommunications utility must obtain verification as specified in 47 Code of Federal Regulations §64.1150, and subsection (d) of this section, relating to Letters of Agency. The prospective telecommunications utility must maintain records of all carrier-initiated changes, including verifications, for a period of 12 months and shall provide such records to the customer, if such customer challenges the change, and to the commission staff if it so requests. A carrier-initiated change order must be verified by one of the methods set out in paragraphs (1)-(4) of this subsection.

(1) Verification may be obtained by written authorization from the customer in a form that meets the requirements of subsection (d) of this section.

(2) Verification may be obtained by electronic authorization placed from the telephone number(s) which is (are) the subject of the change order(s) except in exchanges where automatic recording of the ANI from the local switching system is not technically possible; however, if verification is obtained by electronic authorization, the prospective telecommunications utility must:

(A) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

(B) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change whereby calls to the toll-free number(s) will connect the customer to a voice response unit or similar mechanism that records the required information regarding the change, including automatically recording the ANI from the local switching system.

(3) Verification may be obtained by the customer's oral authorization to submit the change order, given to an appropriately qualified and independent third party operating in a location physically separate from the marketing representative, that confirms and includes appropriate verification data (e.g., the customer's date of birth or mother's maiden name).

(4) Verification may be obtained by sending each new customer an information package via first class mail within three business days of a customer's request for a telecommunications utility change provided that such verification meets the requirements of subparagraph (A) of this paragraph and the customer does not cancel service after receiving the notification pursuant to subparagraph (B) of this paragraph.

(A) The information package must contain at least the information and material as specified in 47 Code of Federal Regulations §64.1100(d) and this subparagraph which includes:

(i) a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week;

(ii) the name of the customer's current provider of the service that will be provided by the newly requested telecommunications utility;

(iii) the name of the newly requested telecommu-nications utility;

(iv) the type of service(s) that will be provided by the newly requested telecommunications utility

(v) a description of any terms, conditions, or charges that will be incurred;

(vi) the statement, "I understand that I must pay a charge of approximately \$ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and by not canceling this change order within 14 days of the date that this information package was mailed to me I indicate that I understand those differences (if any) and am willing to be billed accordingly;

(vii) the telephone numbers that will be switched to the newly requested telecommunications utility;

(viii) the name of the person ordering the change;

(ix) the name, address, and telephone number of both the customer and the newly requested telecommunications utility;

(x) a postpaid postcard which the customer can use to deny, cancel or confirm a service order;

(xi) a clear statement that if the customer does not return the postcard the customer's telecommunications utility will be switched to the newly requested telecommunications utility within 14 days after the date the information package was mailed by (the name of the newly requested telecommunications utility); and

(xii) the statement, "Complaints about telephone service and unauthorized changes in a customer's telephone service provider ("slamming") are investigated by the Public Utility Commission of Texas. If a telephone company "slams" you and fails to resolve your request to be returned to your original telephone company as required by law, or if you would like to know the complaint history for a particular telephone company, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, 512/936-7120, or toll-free within Texas at 1- 888/782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at 512/936-7136."

(B) The customer does not cancel the requested change within 14 days after the information package is mailed to the customer by the prospective telecommunications utility.

(d) Letters of Agency (LOA). If a telecommunications utility obtains written authorization from a customer for a change of telecommunications utility as specified in subsection (c)(1) of this section, it shall use a letter of agency (LOA) as specified in this subsection.

(1) The LOA shall be a separate or easily separable document containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer of the telephone line(s) requesting the telecommunications utility change.

(2) The LOA shall not be combined with inducements of any kind on the same document; except that the LOA may be combined with a check if the LOA and the check meet the requirements of subparagraphs (A)-(B) of this paragraph.

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA shall not contain any promotional language or material but shall contain, on the front of the check and on the back of the check in easily readable, bold-faced type, type near the signature line, the following notice: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that the telecommunications utility will be providing).

(3) LOA language.

(A) The LOA must be printed clearly and legibly and use only the following language:  
Figure: 16 TAC §26.130(d)(3)(A)

(B) In the LOA set out by subparagraph (A) of this paragraph, the telecommunications utility seeking authorization shall replace, in bold type, the words:

(i) "(new telecommunications utility)," with its corporate name;

(ii) "(type of service(s) that will be provided by the new telecommunications utility)," with the type of service(s) that it will be providing to the customer; and

(iii) "I must pay a charge of approximately \$ (industry average charge)" with the text, "there is no charge" only if there is no charge of any kind to the customer for the switchover.

(4) The LOA shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of a LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the LOA.

(e) Changes initiated by a customer. In the case of a customer-initiated change of telecommunications utility, the telecommunications utility to which the customer has changed his service shall maintain a record of nonpublic customer specific information that may be used to establish that the customer authorized the change. Such information is to be maintained by the telecommunications utility for at least 12 months after the change and will be used to establish verification of the customer's authorization. This information shall be treated in accordance with the Federal Communications Commission (FCC) rules and regulations relating to customer-specific customer proprietary network information, and shall be made available to the customer and/or the commission staff upon request.

(f) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed and the change was not made or verified consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

(A) return the customer to the telecommunications utility from which the customer was changed (the original telecom-

munications utility) where technically feasible, and if not technically feasible, take all action within the utility's control to return the customer to the original utility, including requesting reconnection to the original telecommunications utility from a telecommunications utility that can execute the reversal, within three business days of the customer's request;

(B) pay all usual and customary charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(C) provide all billing records to the original telecommunications utility that are related to the unauthorized provision of services to the customer within 10 business days of the customer's request to return the customer to the original telecommunications utility;

(D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility; and

(E) return to the customer any amount paid by the customer in excess of the charges that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility.

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility from which the customer was changed shall:

(A) provide the telecommunications utility that initiated the unauthorized change with the amount that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 10 business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) provide to the customer all benefits associated with the service(s) (e.g., frequent flyer miles) that would have been awarded had the unauthorized change not occurred, on receipt of payment for service(s) provided during the unauthorized change; and

(C) maintain a record related to customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) that were affected by the unauthorized change;

(iii) the date the customer requested that the telecommunications utility that initiated the unauthorized change return the customer to the original carrier; and

(iv) the date the customer was returned to the original telecommunications utility.

(g) Notice of customer rights.

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its

customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish, in the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

(2) Each notice provided as set out in paragraph (4)(A) of this subsection shall also contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice shall state:  
Figure: 16 TAC §26.130(g)(3)

(4) Distribution and timing of notice.

(A) Each telecommunications utility shall mail the notice to each of its residential and business customers within 30 days of the effective date of this section. In addition, the telecommunications utility shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with the first publication of such directories subsequent to the effective date of this section; thereafter, the notice must appear in the white pages of each telephone directory published for the telecommunications utility. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(h) Compliance and enforcement.

(1) Records of customer verifications. A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c) - (e) of this section to the commission staff upon request.

(2) Records of unauthorized changes. A telecommunications utility shall provide a copy of records maintained under the requirements of subsection (f)

(3) Administrative penalties. If the commission finds that a telecommunications utility has repeatedly engaged in violations of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. For purposes of §15.024(b) and (c), there shall be a rebuttable presumption that a single incident of an unauthorized change in a customer's telecommunications utility ("slamming") is not accidental or inadvertent if subsequent incidents of slamming by the same utility occur within 30 days of when the incident is reported to the commission, or during the 30-day cure period. Any proceeds from administrative penalties that are collected under this section shall be used to fund enforcement of this section.

(4) Certificate revocation. If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state. For purposes of this section, a single incident of slamming may be deemed reckless if subsequent incidents of slamming by the same telecommunications utility occur during the 30-day grace period after an incident of slamming is reported to the commission regarding the initial incident.

(i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the information contained in paragraphs (1)-(4) of this subsection in legible, bold type in each bill sent to a customer. Where charges for

multiple lines are included in a single bill, the information contained in paragraphs (1)-(3) of this subsection must be contained on the first page of the bill to the extent possible. Any information that cannot be located on the first page must be displayed prominently elsewhere in the bill.

(1) If a bill is for local exchange service, the name and telephone number of the telecommunications utility that is providing local exchange service directly to the customer.

(2) If the bill is for interexchange services, the name and telephone number of the primary interexchange carrier.

(3) In such cases where the telecommunications utility providing local exchange service also provides billing services for a primary interexchange carrier, the first page of the combined bill shall identify both the local exchange and interexchange providers, as required by paragraphs (1) and (2) of this subsection; however, the commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement, prominently located in the bill, that if the customer believes that the local exchange provider or the interexchange carrier named in the bill is not the customer's chosen interexchange carrier, that the customer may contact: Public Utility Commission of Texas, Office of Customer Protection, P. O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

This 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 August 20, 1998.

TRD-9813269

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 4, 1998

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



## Subchapter J. Costs, Rates and Tariffs

### 16 TAC §26.216

The Public Utility Commission of Texas (PUC or commission) proposes new §26.216, relating to Educational Percentage Discount Rates (E-Rates). The proposed new section will replace §23.107 of this title (relating to Educational Percentage Discount Rates (E-Rates)). Proposed new §26.216 is responsive to the Federal Communication Commission's (FCC) Report and Order *In the Matter of Federal- State Joint Board on Universal Service* in CC Docket Number 96-45, FCC 97-157 (May 7, 1997) which implemented key portions of the federal Telecommunications Act of 1996 (FTA), §254, and adopted a federal universal service support mechanism to fund discounts on interstate and intrastate telecommunications services, Internet access, and internal connections for schools and libraries. Project Number 17709 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 con-

sider for reoption 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.

The only changes proposed in new §26.216 from corresponding §23.107 are to change the section number designation and move the section to Chapter 26, Subchapter J, relating to Costs, Rates and Tariffs; and to delete existing §23.107(c), as the requirements of this section have already been fulfilled.

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

Ms. Ervin has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the ability of schools and libraries to affordably access the broadest array of telecommunications services possible to use and teach students to use state of the art telecommunications technologies as they arrive on the commercial market. In addition, the discounting of telecommunications services under this section will provide schools and libraries with the maximum flexibility to purchase a package of telecommunications services that they believe will meet their needs most effectively and efficiently. 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.

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

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to

Project Number 17709 - §26.216 relating to Educational Percentage Discount Rates (E-Rates).

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

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

§26.216. Educational Percentage Discount Rates (E-Rates).

(a) Purpose. The purpose of this section is to establish educational percentage discount rates (E-Rates) for intrastate telecommunications services, Internet access, and internal connections that are equivalent to those adopted for interstate services by the Federal Communications Commission (FCC) in 47 Code of Federal Regulations part 54, subpart F (Universal Service Support for Schools and Libraries).

(b) Provisions governing intrastate E-Rates.

(1) Intrastate services eligible for E-Rates. The percentage discount rates available pursuant to 47 Code of Federal Regulations part 54, subpart F to eligible schools, libraries, and consortia as defined by 47 Code of Federal Regulations part 54, subpart F shall apply to the following intrastate services:

(A) all commercially available telecommunications services provided by telecommunications carriers;

(B) Internet access; and

(C) installation and maintenance of internal connections.

(2) Eligibility for intrastate E-Rates. Schools, libraries, and consortia eligible for E-Rates pursuant to 47 Code of Federal Regulations part 54, subpart F shall comply with the provisions of 47 Code of Federal Regulations part 54, subpart F in order to receive the intrastate E-Rates.

This 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 August 20, 1998.

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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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

## TITLE 19. EDUCATION

### Part I. Texas Higher Education Coordinating Board

#### Chapter 12. Proprietary Schools

##### Subchapter A. Purpose and Authority

##### 19 TAC §§12.21, 12.22, 12.24

The Texas Higher Education Coordinating Board proposes amendments to §§12.21, 12.22, and 12.24 concerning Propri-

etary Schools (Purpose and Authority). The amendments to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

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

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that minimum standards for the approval of applied associate degree programs at proprietary schools will be enforced. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Purpose and Authority).

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

#### §12.21. Purpose.

The purpose of this chapter is to assure the quality and integrity of applied associate degree programs offered by proprietary institutions by establishing minimum standards and operating requirements, encouraging continuous improvement of degree programs, and promoting institutional accountability. [It is the intent of the Legislature to encourage proprietary postsecondary institutions and to ensure the integrity of applied associate degrees offered by proprietary institutions.]

~~{(1) Proprietary schools, as defined in the Texas Education Code, Section 132.001, offering programs in which applied associate degrees are awarded, shall meet minimum institutional and educational program quality standards.}~~

~~{(2) Applied associate degrees offered by proprietary schools shall meet minimum institutional and educational program quality standards established by the Board.}~~

#### §12.22. Authority.

The Texas Education Code, Chapter 132, Section 063, and Chapter 61, Subchapter G [~~Section 132.063~~] authorizes the Texas Higher Education Coordinating Board to establish and enforce minimum standards for the approval and on-going assessment of programs of study leading to degrees offered by proprietary schools. [the award of the applied associate degree.]

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

#### §12.24. Definitions.

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

(1) Acknowledgment of accreditation The Board's understanding that an accreditor is recognized and approved by the United States Department of Education as an accreditor of applied associate degree programs offered by proprietary institutions.

(2) Agent - A proprietary institution owner, partner, officer, director, administrator, admissions representative, or financial aid administrator who represents the institution in an official capacity. Persons employed in clerical, custodial, or similar positions, or shareholders with no direct relationship to the institution, are not considered agents of an institution.

(3) Annual Fee - A fee established by the Board, collected from proprietary institutions with authorization to grant degrees on an annual basis, and is used to offset the cost of proprietary degree program oversight.

(4) Applied Associate Degree - Refers specifically to the A.A.A., A.A.S., and the A.O.S. degrees in this chapter.

(5) Appropriate credentials in counseling - Certification by the National Board for Certified Counselors or Texas licensure to practice counseling.

(6) Appropriate training in counseling - An earned graduate degree in counseling, student personnel (with counseling emphasis), counseling psychology, or closely related field, from a regionally accredited college or university.

(7) Articulation - A planned process linking educational institutions and experiences to assist students in making a smooth transition from one level of technical and vocational education to another without experiencing delays or duplication of learning.

(8) Associate of Occupational Studies - Refers specifically to the A.O.S. degree. The A.O.S. degree is approved according to the conditions of the Coordinating Board policy adopted on April 30, 1993: The State of Texas has four proprietary schools awarding the A.O.S. degree: MTI College of Business and Technology (known as Microcomputer Technology Institute when this policy was adopted, Universal Technical Institute, Southwest School of Electronics, and Western Technical Institute. The A.O.S. degree is awarded for the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of these four schools may continue to award the A.O.S. degree for those fields listed above and shall be restricted to those fields. Subspecialities within these fields and under the present titles may be offered and advertised upon providing prior notice to the Board. No new A.O.S. degree programs in other fields from these four schools or any other schools will be considered by the Board. Should any of these four schools choose to propose to offer degrees in other fields or should these four institutions open schools outside of the metropolitan locations in which they were operating as of April 29, 1993, they will be required to design programs which lead to the A.A.S. degree.

(9) Basic Computer Instruction - Formal course work in the fundamentals of personal computer operation.

(10) Board - The Texas Higher Education Coordinating Board.

(11) Change of ownership - Any change in control of a school or an agreement to transfer control of a school. The control of a school is considered to have changed:

(A) In the case of ownership by an individual, when more than 50 percent of the school has been sold or transferred;

(B) In the case of ownership by a partnership or a corporation, when more than 50 percent of the school or of the owning partnership or corporation has been sold or transferred; or

(C) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(D) A change of ownership and control does not include a transfer which occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse or child; spouse's parent or sibling; or sibling's or child's spouse.

(12) Cited - Any reference to an institution in a negative finding or action by an accreditor.

(13) Commissioner - The Commissioner of Higher Education.

(14) Concurrent Instruction - Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(15) Contract Instruction - Specifically targeted instruction designed by a proprietary school and a contracting entity.

(16) Degree - Any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's, master's, doctor's and their equivalents, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic/occupational degree-level program among Texas postsecondary institutions.

(17) Developmental courses - Courses designated as remedial or compensatory education courses. Credit earned in a developmental course is not applicable toward the applied associate degree. Also see remediation.

(18) Exempt - A degree-granting institution which is exempt from Texas Education Code, Chapter 132.

(19) Faculty member - A teacher as described in §12.44(a) and §12.44(b) of this title (relating to Basic Standards).

(20) Full-time faculty member - A person whose major employment is with the institution, whose primary assignment is teaching, and whose employment is based on an agreement for full-time employees.

(21) Institution - See proprietary school.

(22) Library/Learning Resources - Instructional materials (e.g. books, audio-visual equipment, and computers) that support the educational/vocational development of the student.

(23) Multiple Site Program Offering - Any extension location where course(s) which are alleged to entitle a student to an applied associate degree are offered.

(24) Newly-enrolled student - A person who has been admitted to a program of study for the first time.

(25) Owner - The proprietor of a school including an individual; a partnership including all full, silent, and limited partners; a corporation or corporations including directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares.

(26) Person - Any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(27) Program Approval - The process whereby an institution requests authorization to implement a technical or vocational program leading to the applied associate degree.

(28) Program of Study - Any course or grouping of courses which entitle a student to an applied associate degree or to credits which are applicable to an applied associate degree.

(29) Proprietary School - Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by this chapter, and:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence or both to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

(30) Prospective student - A person who expresses interest in a program of study and who is provided with written information about the institution or any of the institutions' programs.

(31) Learning resource center administrator - A person who holds an earned degree in library science from a regionally accredited college or university or who is otherwise qualified by experience acceptable to the Board to oversee the activities of a proprietary school learning resources center or library.

(32) Remediation - An activity designed to teach basic competency in such areas as reading, writing, oral communications, arithmetic, or other rudimentary subjects.

(33) Representative - See Agent.

(34) Resident - A faculty member who has been formally hired or has an employment agreement with the institution.

(35) Returning student - A person who is returning to a program of study following withdrawal or other absence of more than one academic semester or one academic quarter.

(36) Target market area - The local, regional, statewide, and/or national area from which the institution's students are drawn and in which employment opportunities have been identified for graduates of that institution's applied associate degree programs.

[TEA - The Texas Education Agency-]

(37) Teaching day - The time period when regular classes are scheduled including the time period for regular evening classes.

(38) Teach-out agreement - A formal arrangement between a closed proprietary institution and another institution authorized by the Coordinating Board to grant the applied associate degree, which provides for student transfer, completion of degree requirements, and awarding degrees to students transferred from the closed proprietary school.

(39) Teach-out Institution - An institution that is authorized by the Coordinating Board to grant the applied associate degree and that has formally accepted the transfer of students from a proprietary school that has closed.

(40) Testing irregularity - Any act of dishonesty involving the TASP Test. Further definition is contained in Chapter 5, Subchapter P, Texas Higher Education Coordinating Board Rules.

(41) Texas Academic Skills Program (TASP) Test - The test required by TEC 51.306 which shall be uniformly administered statewide on days prescribed by the Board and shall be scored by the testing contractor. The test measures college readiness in



reading, writing, and mathematics and includes a written essay. It is administered under secure conditions and each student is provided with diagnostic information regarding test performance.

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

Filed with the Office of the Secretary of State on August 21, 1998.

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James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 23, 1998

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



## Subchapter B. Basic Standards

### 19 TAC §12.41, §12.44

The Texas Higher Education Coordinating Board proposes amendments to §12.41 and §12.44 concerning Proprietary Schools (Basic Standards). The amendments to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

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

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that minimum standards for the approval of applied associate degree programs at proprietary schools will be enforced. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

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

#### §12.41. Minimum Standards.

The [program] standards for applied associate degree [degrees] programs in proprietary schools embrace the standards for vocational/technical degree programs in public community and technical colleges with considerations made for the legitimate differences between public and privately-owned institutions. The standards specified in this subchapter apply to proprietary institutions offering applied associate degrees. Institutions seeking authority to offer a baccalaureate or higher degree must seek approval from the Board and are subject to the standards contained in Chapter 5, Subchapter K, of this title (relating to Transfer of Lower Division Course Credit) Board rules.

[approved by the Coordinating Board reflect the criteria contained in Section IV. ("Educational Program") and Section V. ("Educational Support Services") of the Criteria for accreditation of the Commission on Colleges, Southern Associate of Colleges and Schools.]

(1) Application For A Degree Program. The application for a certificate of authorization to offer a degree shall contain, at minimum, all information, documentation, and material required by the Guidelines for Instructional Programs in Workforce Education. In addition, the application shall contain a description of the purpose of the institution, names of sponsors or owners of the institution, regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution; the names and addresses of the chief administrative officer, and the principal administrators and each member of the board of trustees or other governing board. In addition the application shall contain a full description of the admission requirements and a description of the facilities and equipment utilized by the institution. No less than 30 days prior to implementation of the program, the institution must submit the names and addresses of the faculty who will, in fact, teach in the program of study, with the highest degree held by each.

(2) Qualifications of Institutional Officers. The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may be reasonably ensure that students will receive education consistent with the objectives of the course or program of study.

(3) Instructional Assessment. Provisions shall be made for the continual assessment of the program of study, including the evaluation and improvement of instruction.

(4) Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the program of study shall be offered in organized classes by the institution.

(5) General Education. The degree program shall contain a general education component consisting of the number of credit hours specified in the Guidelines for Instructional Programs in Workforce Education.

(A) This component shall be drawn from each of the following areas: humanities and fine arts, social and behavioral science, natural sciences and mathematics. It shall include courses to develop skills in written and oral communication and in basic computer operation. Courses designed to correct deficiencies, remedial courses, and leveling courses may not count toward course requirements for the degree.

(B) The institution may arrange for all or part of the general education component to be taught by another institution with the following provisions: there must be a written agreement between the institutions to provide the general education component, courses must be offered in organized classes and the providing institution shall be accredited by a recognized accrediting agency or must possess a Coordinating Board certificate of authorization to grant degrees.

(6) Credit for Prior Learning. If an institution awards credit for prior learning obtained outside a formal collegiate setting, the institution must establish and adhere to a systematic method for evaluating that prior learning, equating it with course content appropriate to the institution's authorized degree program(s). The method of evaluating prior learning must be subject to ongoing review

and evaluation by the institution's teaching faculty. In no instance shall course credit be awarded solely on the basis of life experience or years of service in a position or job. Recognized evaluative examinations such as the advanced placement program or the college level examination program may be used to evaluate prior learning.

(7) Library. The institution shall have in its possession or under its direct control a sufficient quality and variety of library holdings to adequately support its own curriculum.

(A) All holdings shall be cataloged according to the Dewey Decimal, Library of Congress, or similar system. There must be a convenient and organized system whereby students may borrow library materials available for circulation. The library must be open and accessible to students and faculty members throughout the teaching day and at appropriate times before and after scheduled classes. The library shall have adequate facilities to contain the holdings, and space for student and faculty study.

(B) The institution must employ a learning resources administrator who shall be responsible for oversight of the library and on-site learning resources. The learning resources administrator may perform additional duties and assignments at the institution.

(C) The institution is encouraged to seek an agreement with a nearby academic library which permits students to use those facilities. When such arrangements are made, the agreement shall be in writing. In no instance will an institution be permitted to rely upon external library resources in lieu of establishing and maintaining an adequate library on-site.

(8) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide good quality education and training.

(9) Financial Resources and Stability. The institution shall have the adequate financial resources and financial stability to satisfy the financial regulations of the Texas Workforce Commission, the U. S. Department of Education if the institution participates in Title IV financial aid programs, and the institution's accrediting agency. The institution shall furthermore have sufficient financial reserves so that it would be able to teach-out currently enrolled students if it were unable to admit any new students.

(10) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with generally accepted accounting practices.

(11) Academic Freedom and Faculty Security. The institution shall adopt and distribute to all members of the faculty a statement assuring freedom in teaching, scholarly inquiry, and dissemination of knowledge. This requirement in no way limits an institution's legitimate evaluation of faculty member performance.

(A) All policies concerning promotion, non-renewal or termination of appointments, including for cause, shall be described in writing and furnished to all faculty members.

(B) The specific terms and conditions of employment of each faculty member shall be clearly described in writing and furnished to each faculty member.

(12) Academic Records. A system of record keeping shall be established and maintained in a manner consistent with accepted and professional practice in higher education. Records shall be securely maintained at all times. Contents of records shall, at minimum, include attendance and progress or grades. Two copies

of the information necessary to generate student transcripts shall be maintained at separate locations. At least one copy shall be secured in a manner which is resistant to destruction by fire and natural disaster. Transcripts shall be issued upon the request of students or former students. An institution may, however, withhold a student's transcript under the condition stipulated in 132.062, Texas Education Code.

(13) Catalog. The institution shall provide students and other interested persons with a catalog or brochure containing at minimum the mission of the institution; a statement of admissions policies; information describing the purpose, length, and objectives of the program(s) offered by the institution; the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; a definition of the unit of credit as it applies at the institution; an explanation of satisfactory progress as it applies at the institution; an explanation of the grading or marking system; the institution's calendar including the beginning and ending dates for each instructional term, holidays, and registration dates; a listing of full-time faculty members showing highest earned degree and identifying the institution which awarded the degree; areas of faculty specialization; names and titles of administrators; a statement of legal control with the names of the trustees, directors, and officers of the corporation; a complete listing of all scholarships offered, if any; a statement describing the nature and extent of available student services; and any disclosures specified by the Board or defined in Board rules. This information shall be provided to prospective students prior to enrollment. The institution shall, on an annual basis, furnish the Board with a copy of its most current catalog and a current roster of all faculty members including names, addresses, teaching assignments, and highest degree earned.

(14) Refund Policy. The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(15) Credentials. Upon completion of an approved program of study, students shall be given appropriate credentials by the institution indicating that the program undertaken has been satisfactorily completed.

(16) Student Rights and Responsibilities. A handbook, catalog, or other publication listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and shall inform each student of these policies in writing.

(17) Housing. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(18) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable rules and regulations of the Texas Workforce Commission.

(19) Open and Accurate Representation of Activities. Neither the institution or its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, or misleading.

§12.44. *Faculty Qualifications.*

(a) The character, education, and experience in education of the faculty shall be such as may reasonably ensure that students will receive an education consistent with the objectives of the program of study.

(b) {(a)} General Education Faculty – All full-time and part-time faculty members teaching general education courses must have completed 18 graduate semester hours in their teaching field and

hold a master's degree. Exceptions to academic preparation must be justified by the postsecondary institution on an individual basis. Exceptions are subject to review and approval by the Coordinating Board. It is the institution's responsibility to keep documentation of faculty qualifications on file.

(c) [(b)] Technical/Specialty Faculty – All full-time and part-time faculty in technical/specialty courses must have both academic and work experience. The minimum academic preparation for faculty teaching in professional and technical fields must be at the degree level at which the faculty member is teaching. Faculty who teach technical specialty courses must have three years of direct or closely related work experience exclusive of teaching. Exceptions to academic preparation or work experience must be justified by the institution on an individual basis. Exceptions are subject to review and approval by the Coordinating Board. It is the institution's responsibility to keep documentation of faculty qualifications on file.

(d) [(e)] It shall be the responsibility of the institution to maintain an in-service continuing education program to encourage professional growth and development of faculty members.

(e) [(d)] All institutions shall demonstrate promotion of teaching excellence by developing a written plan for faculty professional development. The plan must address full and part-time faculty preparation and professional development.

This 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 August 21, 1998.

TRD-9813357

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 23, 1998

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



### 19 TAC §12.56

The Texas Higher Education Coordinating Board proposes new §12.56 concerning Proprietary Schools (Basic Standards). The new section to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

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

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that minimum standards for the approval of applied associate degree programs at proprietary schools will be enforced. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The new section to the rules is proposed under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

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

### §12.56. Concurrent Instruction.

(a) Concurrent instruction of students enrolled in a degree program or in any component of a degree program is prohibited.

(b) The following activities do not constitute concurrent instruction:

(1) voluntary participation in laboratory and/or skill building activities outside of required lecture and laboratory class sessions;

(2) voluntary participation in study and/or review sessions outside of required lecture and laboratory class sessions;

(3) sitting for proctored examinations;

(4) field trips; and

(5) extracurricular 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.

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James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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



### Subchapter C. Operational Provisions

#### 19 TAC §12.80, §12.81

The Texas Higher Education Coordinating Board proposes amendments to §12.80 and §12.81 concerning Proprietary Schools (Operational Provisions). The amendments to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

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

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that minimum standards for the approval of applied associate degree programs at proprietary schools will be enforced. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas

Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

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

*§12.80. Exemption from Texas Education Code, Chapter 132.*

(a) An institution which requests and is granted exemption by the Texas Workforce Commission from Texas Education Code, Chapter 132, may not operate under the provisions of this chapter. Upon becoming exempt, a degree-granting institution must immediately:

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

(b) (No change.)

*§12.81. Withdrawal of Authorization to Grant Degrees by Board Action.*

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

(d) Degree-granting authorization is automatically withdrawn if, after receiving 60 days advance notification of the annual fee amount and the date upon which the fee is due, an institution fails to remit the fee by the due date. Authorization to grant degrees may be reinstated by the commissioner upon recommendation of the staff and receipt of the established reinstatement fee.

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

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TRD-9813359

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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



**19 TAC §12.82**

The Texas Higher Education Coordinating Board proposes new §12.82 concerning Proprietary Schools (Operational Provisions). The new section to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

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

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that minimum standards for the approval of applied associate degree programs at proprietary schools will be enforced. There will be no effect on state or local government or small businesses. There is

no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The new section to the rules is proposed under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

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

*§12.82. Acknowledgment of Accreditation.*

(a) An organization which accredits proprietary institutions authorized to grant the applied associate degree in Texas is acknowledged by the Board if the accreditor is recognized by the U.S. Department of Education as an accreditor of applied associate degree programs.

(b) Acknowledged accreditors of applied associate degree programs offered by proprietary institutions in Texas are the Accrediting Commission of Career Schools and Colleges of Technology), the Accrediting Council for Independent Colleges and Schools (ACICS), and the Commission on Education (COE).

(c) Acknowledgment of accreditation does not exempt an institution from Board review and oversight.

This 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-9813360

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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



**Chapter 17. Campus Planning**

**Subchapter B. Application for Approval of New Construction and Major Repair and Rehabilitation**

**19 TAC §17.45**

The Texas Higher Education Coordinating Board proposes an amendment to §17.45, concerning Application for Approval of New Construction and Major Repair and Rehabilitation (Energy Conservation Projects). The 75th Legislature modified section 51.927 of the Texas Education Code, dealing with energy performance contracting. One of the modifications requires that the Board, in making its recommendations regarding energy performance contracts, consider evaluations of the Texas Energy Coordination Council (TECC). The amendments to the rule will make it clear that TECC is included in the review process. Previously, energy conservation projects were only reviewed by the Coordinating Board and the State Energy Conservation Office (SECO) (formerly Energy Management

Center). These projects now also require TECC in the review process. The rules are being amended to bring them in line with state law and our current procedures.

Roger Elliott, Assistant Commissioner for Finance, Campus Planning, and Research has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule. TECC has no qualified staff for review of these projects, nor a budget for contracting with qualified personnel to conduct the review on their behalf. Since House Bill 3530 specifies that SECO may charge the institutions for a cost-benefit analysis, SECO and TECC have resolved to contract with a third party to conduct the necessary review on behalf of both agencies. This cost is passed on to the institutions, and must be incorporated into the overall cost of the energy performance project. Consequently, that cost must be repaid through energy cost savings, and may preclude additional energy cost reduction measures from being implemented.

Dr. Elliott also has determined that for the first five years the rule is in effect the public benefit will be the addition of TECC in the review process will result in a more thorough review and validation of energy performance contracts. This provides additional assurance to the institutions, the Coordinating Board, and the State of Texas that the proposed projects will result in the cost savings anticipated, and that they will be adequate to repay the cost of implementing the project. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendment is proposed under Texas Education Code, Section 51.927(h), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Application for Approval of New Construction and Major Repair and Rehabilitation (Energy Conservation Projects).

There are no other sections or articles affected by the proposed amendment.

#### *§17.45. Energy Conservation Projects.*

For the purpose of encouraging repair and rehabilitation projects that improve energy conservation in higher education facilities, the following procedure may be used to review, for Board approval, energy conservation projects reviewed by the State Energy Conservation Office and the Texas Energy Coordination Council [~~Office's Energy Management Center~~] for funding through a performance contract; or energy conservation contracts approved for funding by the State Energy Conservation Office [SECO/EMC] through the Texas LoanSTAR Program.

(1) The State Energy Conservation Office and the Texas Energy Coordination Council [~~Energy Management Center~~] periodically will submit to the Coordinating Board lists of the projects they ~~have~~ [it has] reviewed for funding through performance contracting, and the State Energy Conservation Office will submit lists of the projects it has [ø] approved for funding through the Texas LoanSTAR Program at public institutions of higher education, except community or junior colleges.

(2) (No change.)

(3) The staff submits the list of projects to the Campus Planning Committee for its consideration [~~approval~~] on behalf of the full Board.

(4) If the committee approves the list of projects the staff will notify the State Energy Conservation Office and Texas Energy Coordination Council [~~Energy Management Center~~] and the institutions whose projects have been approved.

(5) (No change.)

(6) The Coordinating Board or Campus Planning Committee must approve energy conservation performance contracts. However, the Board or Campus Planning Committee will consider the review and comment report from the State Energy Conservation Office and the Texas Energy Coordination Council [~~Energy Management Center~~] prior to approval.

This 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 August 24, 1998.

TRD-9813415

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 23, 1998

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

## TITLE 22. EXAMINING BOARDS

### Part V. State Board of Dental Examiners

#### Chapter 109. Conduct

##### Subchapter I. Fair Dealing

###### 22 TAC §109.145

The State Board of Dental Examiners proposes new §109.145, concerning required display of dental degree on written communications to the public.

Douglas A. Beran, Executive Director, State Board of Dental Examiners (SBDE), has determined for the first five-year period the rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the rule

Mr. Beran has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be communications from a dentist to the public concerning dental services will inform the public that the communicator is a dentist.

The SBDE has determined that the proposed rule will not have an adverse economic impact on small businesses as the cost of compliance, if any, will be minimal.

There is no anticipated impact on local government.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before October 5, 1998.

The new rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543§2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

§109.145. Dental Degree Required on Written Communication to Public.

A Texas dental licensee, in any professional written communication concerning dental services, shall include the dentist's dental degree or the dentist may use the words "general dentist", "general dentistry", or an ADA approved dental specialty, if the dentist is a specialist in the field designated.

This 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 August 24, 1998.

TRD-9813435

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 1998

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



## Subchapter L. Anesthesia and Anesthetic Agents

### 22 TAC §109.171

The State Board of Dental Examiners proposed amendments to §109.171, concerning the effective date of §§109.171-109.175.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the proposed amendment to §109.171 clarifies the effective dates amended rules affecting anesthesia procedures.

There will be no effect on small and large businesses and on persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512-463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before October 5, 1998. In addition, a public hearing will be held during the regularly scheduled SBDE meeting of November 6, 1998, at 333 Guadalupe, Tower 2, 2nd floor, Room II-225, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

### § 109.171. Effective Date.

Unless specifically provided otherwise, the provisions of rules 109.172, 109.173, 109.174, and 109.175 that require equipment and/or certifications not required by those rules that were in effect on September 1, 1998, shall not be enforced until January 1, 2000. [The effective date of these sections shall be July 1, 1988.]

This 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 August 24, 1998.

TRD-9813440

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 1998

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



### 22 TAC §109.172

The State Board of Dental Examiners proposes amendments to §109.172, concerning definitions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.172 clarifies certain definitions relative to administration of anesthesia.

There will be no effect on small and large businesses and on persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512-463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before October 5, 1998. In addition, a public hearing will be held during the regularly scheduled SBDE meeting of November 6, 1998, at 333 Guadalupe, Tower 2, 2nd floor, Room II-225, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

### §109.172. Definitions.

The following words and terms, when used in subchapter L, Anesthesia and Anesthetic Agents[this chapter], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Analgesia - the diminution or elimination of pain[or production of increased tolerance to pain in the conscious patient].

(2) Competent - displaying special skill or knowledge derived from training and experience.

(3) [Parenteral] Conscious Sedation - a minimally depressed level of consciousness that retains the patient's ability to

independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by a pharmacologic or non-pharmacologic method, or a combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.

(4) Continual - repeated regularly and frequently in a steady succession.

(5) Continuous - prolonged without any interruption at any time.

(6) [Parenteral] Deep Sedation - an induced[A Controlled] state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to verbal command, and is produced by a pharmacological or non-pharmacological method, or a combination thereof.

(7) Direct supervision - the dentist responsible for the sedation/anesthesia procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.

(8) Enteral - any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual).

(9) Facility - the primary office where a permit holder practices dentistry and provides anesthesia services.

(10) Facility inspection - an on-site inspection to determine if a facility is supplied, equipped, staffed, and maintained in a condition to support provision of anesthesia services that meet the minimum standard of care; may be required by the State Board of Dental Examiners prior to the issuance of an anesthetic permit or any time during the term of the permit if the holder of or applicant for a permit owns or operates a primary facility or satellite facility.

(11) General anesthesia - an induced[A controlled] state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or[to] verbal command, and is produced by a pharmacological or non-pharmacological method or a combination thereof.

(12) Immediately available - on-site in the facility and available for immediate use.

(13) Inhalation - a technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed (e.g. nitrous oxide/oxygen sedation).

(14) Local anesthesia - the elimination of sensations, especially pain, in one part of the body by regional injection of a drug.

(15) May[or could] - indicates freedom or liberty to follow a reasonable [suggested] alternative.

(16) Must or shall - indicates an imperative need and/or duty; an essential or indispensable item; mandatory.

(17) Nitrous Oxide/oxygen inhalation conscious sedation - the administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains

the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and/or verbal command.

(18) Parenteral - a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC).

(19) Patient Physical Status Classification:

(A) ASA - American Society of Anesthesiologists

(B) ASA I - a normal health patient

(C) ASA II - a patient with mild systemic disease

(D) ASA III - a patient with severe systemic disease

(E) ASA IV - a patient with severe systemic disease that is a constant threat to life

(F) ASA V - a moribund patient who is not expected to survive without the operation

(G) ASA VI - a declared brain-dead patient whose organs are being removed for donor purposes

(H) E - emergency operation of any variety (used to modify the ASA I - ASA VI).

(20) Personal supervision - the provider responsible for the sedation/ anesthesia procedure shall be physically present in the room with the patient at all times during the induction and maintenance of the procedure.

(21) Portability - the ability of a permit holder to provide permitted anesthesia services in a location other than a facility or satellite facility.

(22) Satellite facility - an additional office or offices owned or operated by the permit holder, or owned or operated by a professional organization through which the permit holder practices dentistry, or a licensed hospital facility.

(23) Should - indicates the recommended manner to obtain the standard; highly desirable.

(24) Time-oriented anesthesia record - documentation at appropriate intervals of drugs, doses and physiologic data obtained during patient monitoring.

(25) Topical Anesthesia - the elimination of sensations, especially pain, in one part of the body by the topical application of a drug.

(26) Transdermal/transmucosal - a technique of administration in which the drug is administered by patch or iontophoresis.

This 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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Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 1998

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

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## 22 TAC §109.173

The State Board of Dental Examiners proposes amendments to §109.173, concerning minimum standard of care.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.173 communicates unambiguously that practicing dentists must follow generally accepted protocols and/or standards of care for management of complications and emergencies and informed consent will be required only where there is a reasonable probability of complications from a procedure.

There will be no effect on small and large businesses and on persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512-463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before October 5, 1998. In addition, a public hearing will be held during the regularly scheduled SBDE meeting of November 6, 1998, at 333 Guadalupe, Tower 2, 2nd floor, Room II-225, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

### §109.173. *Minimum Standard of Care.*

Each dentist licensed by the [Texas] State Board of Dental Examiners and practicing in Texas shall conduct his/her[~~their~~] practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Further, each dentist:

(1) (No change.)

(A)-(D) (No change.)

(2) Shall maintain and review an initial medical history and performlimited physical evaluation for all dental patients to wit:

(A) (No change.)

(B) The initial limited physical examination should[~~shall~~]include, but shall not necessarily be limited to, blood pressure and pulse/heart rate as may be indicated for each patient.

(3) (No change.)

(4) Shall, for office emergencies:

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

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) Shall successfullycomplete a currentcourse in basic cardiopulmonary resuscitation [~~every two years~~] offered by either the American Heart Association or the American Red Cross.

(6) Should maintain a written informed consent for all procedures where a reasonable possibility of complications from the procedure exists.[~~Shall obtain an informed consent in all situations where required by law.~~]

This 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 August 24, 1998.

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Earliest possible date of adoption: October 4, 1998

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



## 22 TAC §109.174

The State Board of Dental Examiners proposes amendments to §109.174, concerning sedation, anesthesia permits.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.174 will assure that the overall quality of anesthesia procedures meets the standard of care.

The effect on small businesses that are required to comply with the rule as proposed shall be their staffs remain qualified to meet the standard of care for anesthesia procedures or such businesses shall not be authorized by the State Board of Dental Examiners to perform anesthesia procedures. The fiscal impact on small businesses required to comply with the rule as proposed will be contingent upon each business' cost of permits and staff training for the anesthesia procedure authorized by the State Board of Dental Examiners and concomitant costs associated with each permitted procedure, e.g., equipment and staff. Such costs assure a minimum quality of care that is reasonable for the public safety. These costs, however, are not so negative as to impact the economic viability of a small business. Therefore, the State Board of Dental Examiners has determined that compliance with the proposed rule will not have an adverse economic impact on small businesses as the cost of compliance will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512-463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before October 5, 1998. In addition, a public hearing will be held during the reg-



ularly scheduled SBDE meeting of November 6, 1998, at 333 Guadalupe, Tower 2, 2nd floor, Room II-225, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

§109.174. *Sedation/Anesthesia Permit.*

(a) The [Texas] State Board of Dental Examiners shall appoint advisory consultants for advice and recommendations to the Board on permit requirements, applicant and facility approval.

(b) [~~From the effective date of these sections, each~~]A dentist licensed by the [Texas] State Board of Dental Examiners and practicing in Texas, who desires to utilize nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, and/or parenteral deep sedation and general anesthesia, must obtain a permit [~~of authorization~~] from the [Texas] State Board of Dental Examiners for the requested procedure.

(1) A permit may be obtained by completing an application form approved by the State Board of Dental Examiners, a copy of which may be obtained from the SBDE.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of an anesthesia permit the Board may require that the applicant undergo a facility inspection or further review of anesthesia credentials. The SBDE may direct an Anesthesia Consultant, who has been appointed by the Board, to assist in this inspection or review. The applicant will be notified in writing if an inspection is required and provided with the name of an Anesthesia Consultant who will coordinate the inspection. The applicant must make arrangements for completion of the inspection within 180 days of the date the notice is mailed. An extension of no more than 90 days may be granted if the designated Anesthesia Consultant requests one.

(4) An applicant for a sedation/anesthesia permit must be licensed and in good standing with the State Board of Dental Examiners. For purposes of Rules 109.171 through 109.175, "good standing" means that a licensee is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing will not be approved.

(c) Any dentist approved by the [Texas] State Board of Dental Examiners under previous rules prior to the effective date of this section for the utilization of nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, or parenteral deep sedation/general anesthesia, except as described in subsection (d), shall remain permitted provided that the appropriate fees have been paid and that the dentist has a current license. [or general anesthesia may qualify for a new permit.]

(d) Once a permit is issued, the State Board of Dental Examiners upon payment of required fees shall automatically renew the permit annually unless after notice and opportunity for hearing the board finds the permit holder has, or is likely to provide anesthesia services in a manner that does not meet the minimum standard of care. At such hearing the Board shall consider factors including patient complaints, morbidity, mortality, and anesthesia consultant recommendations. [Each holder of an existing permit shall be required to complete and submit a new application for the procedure(s) desired

within one year from the effective date of these sections to the Texas State Board of Dental Examiners. If the new permit application is not received within this designated period, the prior permit shall be canceled. Each new application shall be reviewed to determine if the permit holder meets the "standard of care" requirements for the permit requested. If the requirements are met, a new permit shall be issued. If the requirements are not met, the permit applicant shall be notified and provided an appropriate period, at the discretion of the Board, to correct the deficiency.]

(e) Annual dental license renewal certificates shall include the annual permit renewal, except as provided for in subsection (d) of this section and shall be assessed an annual renewal fee of \$5.00 payable with the license renewal. New permit fees are \$28.75 payable with the application for permit. [For new applicants who are otherwise properly qualified, a temporary provisional permit may be issued for one year by the Board, based solely upon the credentials contained in the application.]

(f) Permit Restrictions: [Prior to or after the issuance of any permit, the Texas State Board of Dental Examiners may, at its discretion, require an on-site office evaluation to determine if all standards of these sections are being met.]

(1) An anesthesia/sedation permit is valid for the dentist's facility, if any, as well as any satellite facility.

(2) Portability of an anesthesia/sedation permit will be granted to a dentist who, after January 1, 2000, applies for portability if the dentist is granted:

(A) a deep sedation/general anesthesia permit; or

(B) an intravenous parenteral conscious sedation permit if training for the permit was obtained on the basis of completion of

(i) a specialty program approved by the Commission on Dental Accreditation of the American Dental Association, or

(ii) a general practice residency, approved by the Commission on Dental Accreditation of the American Dental Association, or

(iii) an advanced education in general dentistry program, approved by the Commission on Dental Accreditation of the American Dental Association, or

(iv) a Continuing Education (CE) program specifically approved by the SBDE. The board may approve a graduate of a CE program under this subsection only if the applicant can demonstrate administration of intravenous parenteral conscious sedation in at least 30 cases that are documented showing provision of anesthesia services in keeping with the standard of care as determined by one or more of the SBDE's anesthesia consultants; and the applicant establishes that the program consisted of

(I) eighty hours of didactic courses;

(II) administration of intravenous parenteral conscious sedation in at least 20 cases where the applicant was the anesthesia provider.

(3) When anesthesia services are provided by a dentist at a location other than a facility or a satellite facility, the dentist shall strictly adhere to all rules of the State Board of Dental Examiners which may apply. The dentist shall ascertain that the location is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia services that meet the standard of care.

(4) A dentist holding a permit to administer parenteral conscious sedation on the effective date of this rule who is qualified by training or experience to administer intravenous parenteral conscious sedation anesthesia on a portable basis, and who desires to do so must file with the State Board of Dental Examiners proof of completion of:

(A) a specialty program approved by the Commission on Dental Accreditation of the American Dental Association, or

(B) a general practice residency approved by the Commission on Dental Accreditation of the American Dental Association, or

(C) an advanced education in a general dentistry program approved by the Commission on Dental Accreditation of the American Dental Association, or

(D) a Continuing Education program and administration of intravenous parenteral conscious sedation in at least 30 cases that are documented showing provision of anesthesia services in keeping with the standard of care as determined by one or more of the SBDE's anesthesia consultants.

(E) The records of all dentists permitted to administer parenteral conscious sedation will be annotated showing whether portability status is granted.

(F) Any applicant whose request for portability is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, Section 2001 et.seq.

(5) A dentist holding a permit to administer parenteral deep sedation/general anesthesia on the effective date of this rule who desires to provide anesthesia on a portable basis must file with the State Board of Dental Examiners a request for a portability designation.

(A) The records of all dentists permitted to administer parenteral deep sedation/general anesthesia will be annotated showing whether portability status is granted.

(B) Any applicant whose request for portability status is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, Section 2001 et.seq.

(6) The Board may elect to issue a temporary anesthesia/sedation permit which will expire on a date certain. A full anesthesia/sedation permit may be issued after the dentist has complied with requests of the Board which may include, but shall not be limited to, review of the dentist's anesthetic technique, facility inspection and/or review of patient records to ascertain that the minimum standard of care is being met. If a full permit is not issued, the temporary permit will expire on the stated date, and no further action by the State Board of Dental Examiners will be required, and no hearing will be conducted.

(g) Educational/Professional requirements for sedation/anesthesia permits: [Once a permit is issued, the Texas State Board of Dental Examiners shall automatically renew the permit annually unless the holder of said permit is informed by the Board that an evaluation of the permit is required. Prior to an evaluation of an existing permit, the Board shall consider factors to include patient complaints, morbidity, mortality, and advisory consultant recommendations.]

(1) Nitrous Oxide/Oxygen Inhalation Conscious Sedation

(A) To administer nitrous oxide/oxygen inhalation conscious sedation, the dentist must satisfy one of the following criteria:

(i) must have completed training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

(ii) must have completed an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage nitrous oxide/oxygen inhalation conscious sedation.

(B) The following shall apply to the administration of nitrous oxide/oxygen inhalation conscious sedation in the dental office:

(i) provision of nitrous oxide/oxygen inhalation conscious sedation by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);

(ii) when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of nitrous oxide/oxygen inhalation conscious sedation by a CRNA shall require the operating dentist to have completed training in nitrous oxide/oxygen inhalation conscious sedation, and to be permitted for its utilization.

(2) Parenteral Conscious Sedation

(A) To administer parenteral conscious sedation, the dentist must satisfy one of the following criteria:

(i) completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirement described in Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced; or

(ii) completion of an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation.

(B) The following shall apply to the administration of parenteral conscious sedation in the dental office:

(i) provision of parenteral conscious sedation by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);

(ii) when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of parenteral conscious sedation by a CRNA shall require the operating dentist to have completed training in parenteral conscious sedation, and to be permitted for its utilization;

(iii) a dentist administering parenteral conscious sedation must document current, successful completion every three years of an advanced emergency procedures course approved by the State Board of Dental Examiners or an Advanced Cardiac Life Support (ACLS) course, or a Pediatric Advanced Life Support (PALS) or age appropriate equivalent course.

(3) Parenteral Deep Sedation/General Anesthesia

(A) To administer parenteral deep sedation/general anesthesia, the dentist must satisfy one of the following criteria:

(i) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in Part II of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced; or,

(ii) completion of an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage parenteral deep sedation/general anesthesia.

(B) The following shall apply to the administration of parenteral deep sedation/general anesthesia in the dental office:

(i) provision of parenteral deep sedation/general anesthesia by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);

(ii) when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of parenteral deep sedation/general anesthesia by a CRNA shall require the operating dentist to have completed training in parenteral deep sedation/general anesthesia, and to be permitted for its utilization;

(iii) a dentist administering parenteral deep sedation/general anesthesia must document current, successful completion every three years of an advanced emergency procedures course approved by the State Board of Dental Examiners or an Advanced Cardiac Life Support (ACLS) course, or a Pediatric Advanced Life Support (PALS) or age appropriate equivalent course.

~~{(h) Annual dental license renewal certificates shall include the annual permit renewal, except as provided for in (g) above, and shall be assessed an annual renewal fee of \$5.00 payable with the license renewal beginning March 1 and thereafter. New permit issuances will be charged a \$25. fee, payable with the application for permit, beginning March 1, 1992.}~~

This 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 August 24, 1998.

TRD-9813443

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 1998

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

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**22 TAC §109.175**

The State Board of Dental Examiners proposes amendments to §109.175, concerning permit requirements and clinical provisions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.175 will assure that

the overall quality of anesthesia procedures meets the standard of care.

The effect on small businesses that are required to comply with the rule as proposed shall be their staffs remain qualified to meet the standard of care for anesthesia procedures or such businesses shall not be authorized by the State Board of Dental Examiners to perform anesthesia procedures. The fiscal impact on small businesses required to comply with the rule as proposed will be contingent upon each business' cost of permits and staff training for the anesthesia procedure authorized by the State Board of Dental Examiners and concomitant costs associated with each permitted procedure, e.g., equipment and staff. Such costs assure a minimum quality of care that is reasonable for the public safety. These costs, however, are not so negative as to impact the economic viability of a small business. Therefore, the State Board of Dental Examiners has determined that compliance with the proposed rule will not have an adverse economic impact on small businesses as the cost of compliance will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512-463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before October 5, 1998. In addition, a public hearing will be held during the regularly scheduled SBDE meeting of November 6, 1998, at 333 Guadalupe, Tower 2, 2nd floor, Room II-225, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

*§109.175. Permit Requirements and Clinical Provisions.*

(a) Nitrous Oxide/oxygen inhalation conscious sedation. To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional requirements.

(A) Each dentist wishing to utilize this technique must be permitted by the State Board of Dental Examiners (SBDE) to deliver nitrous oxide/oxygen conscious sedation after having met the Education Requirements as detailed in rule 109.174 (g)(1) of this chapter (relating to Sedation/Anesthesia Permit). [Each dentist wishing to utilize this technique must produce satisfactory evidence of completion of a didactic and clinical course of instruction in this technique. Such courses of instruction shall:]

~~{(i) be directed by qualified instructors with advanced education in comprehensive pain control and with broad clinical experience in this technique;}~~

~~{(ii) include a minimum of four hours of didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation;}~~

~~{(iii) include a minimum of six hours of clinical experience under personal supervision.}~~

(B) Nitrous oxide/oxygen inhalation conscious sedation shall be induced and maintained by a dentist licensed by the

State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas. [Each dentist must produce satisfactory evidence of completion of a continuing education course in the nitrous oxide oxygen inhalation/ conscious sedation which includes the prevention and management of emergencies in the dental office; or,]

{(C) Each dentist must have successfully completed qualifications governing the use of parenteral conscious sedation as noted in subsection (b) of this section or deep sedation/general anesthesia as noted in subsection (e) of this section.}

(2) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in rule 109.173 of this chapter (relating to Minimum Standard of Care), and shall in addition:

(A) adhere to the clinical requirements as detailed in subsection(a)(3) of this section; [Each dentist must maintain the minimum standard of care as noted in 109.173 of this title (relating to Minimum Standard of Care).]

(B) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of nitrous oxide/oxygen inhalation conscious sedation. [Each dentist shall induce, monitor, and provide continuous personal supervision of the inhalation conscious sedation procedure, or the dentist shall induce and may delegate under direct supervision, as defined in Rule 109.172, the monitoring of the nitrous oxide inhalation conscious sedation procedure to a dental auxiliary who has been certified by the Board. Certification is obtained by successful completion of a written examination offered by the Board on said subject.]

(C) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross; and

(D) not allow a nitrous oxide/oxygen inhalation conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of nitrous oxide/oxygen inhalation conscious sedation:

(A) Patient Evaluation. Patients subjected to nitrous oxide/oxygen inhalation conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk should be considered.

(B) Pre-Procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of the nitrous oxide/oxygen inhalation conscious sedation.

(ii) the inhalation equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.

(C) Personnel and Equipment Requirements:

(i) in addition to the dentist, at least one member of the assistant staff should be present during the administration of nitrous oxide/oxygen inhalation conscious sedation in non-emergency situations;

(ii) the inhalation equipment must have a fail-safe system that is appropriately checked and calibrated;

(iii) if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized;

(iv) the equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(v) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation:

(i) maintain personal supervision of the patient during induction of the nitrous oxide/oxygen inhalation conscious sedation procedure and during maintenance of nitrous oxide/oxygen inhalation conscious sedation for such a period of time necessary to establish pharmacologic and physiologic vital sign stability. The dentist may delegate under direct supervision, as defined in Rule 109.172 of this chapter (relating to Definitions), the monitoring of the nitrous oxide/oxygen inhalation conscious sedation procedure to a dental auxiliary who has been certified to monitor the administration of nitrous oxide/oxygen inhalation conscious sedation by the State Board of Dental Examiners. Certification is obtained by successful completion of a written examination offered by the State Board of Dental Examiners on said subject.

(ii) individuals present during administration should be documented;

(iii) maximum concentration administered must be documented.

(E) Recovery and Discharge:

(i) recovery from nitrous oxide/oxygen inhalation conscious sedation, when used alone, should be relatively quick, requiring only that the patient remain in an operator chair as needed;

(ii) patients who have unusual reactions to nitrous oxide/oxygen inhalation conscious sedation should be assisted and monitored either in an operator chair or recovery room until stable for discharge;

(iii) the dentist must determine that the patient is appropriately responsive prior to discharge.

(F) Emergency Management. The dentist, personnel and facility must be prepared to treat emergencies that may arise from the administration of nitrous oxide/oxygen inhalation conscious sedation.

(b) Parenteral conscious sedation intravenous (IV), intramuscular (IM), subcutaneous (SC), submucosal (SM), intranasal (IN) To induce and maintain this type of conscious sedation on patients hav-

ing dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional Requirements: [~~parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist licensed in Texas (see paragraph (3) (G) of this subsection).~~]

(A) each dentist wishing to utilize these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral conscious sedation after having met the educational requirements as detailed in Rule 109.174(g)(2) of this chapter (relating to Sedation/Anesthesia Permit).

(B) parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of Care Requirements. Each dentist must maintain the minimum standard of care as detailed in Rule 109.173 of this chapter (relating to the Minimum Standard of Care) and shall in addition: [~~Professional requirements are as follows:~~]

(A) adhere to the clinical requirements as detailed in subsection (b)(3) of this section; [has satisfactorily completed an intensive course that meets the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" published by the American Dental Association Council on Dental Education for the parenteral conscious sedation technique requested; or]

(B) maintain a written informed parenteral conscious sedation consent for each dental patient on whom each procedure is performed; such consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death; [has satisfactorily completed an approved graduate program by the Commission on Dental Accreditation of the American Dental Association where training to competency in parenteral conscious sedation is a minimum standard required in the training guidelines (oral and maxillofacial surgery, pediatric dentistry, periodontics, and some general practice residencies); or]

(C) maintain a time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and which shall include physiologic vital sign monitoring during the course of the procedure; [has satisfactorily completed qualifications governing the use of general anesthesia.]

(D) maintain under continuous personal supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation;

(E) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross.

(F) not allow a parenteral conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral conscious sedation: [~~Standard of care requirements. Each dentist shall utilize~~

the following standard of care in addition to the minimum standards noted in section 109.173 of this title (relating to Minimum Standard of Care) for each parenteral conscious sedation procedure:]

(A) Patient Evaluation. Patients subjected to parenteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk or special monitoring requirements should be considered. [~~maintain an informed conscious sedation consent by each dental patient on whom each procedure is performed, which consent shall specify that the risks related to the procedure include brain damage and death;~~]

(B) Pre-procedure preparation, informed consent: [~~maintain an adequate written sedation record which shall include physiologic vital sign monitoring during the course of the procedure;~~]

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of any sedative agents and the appropriate informed consent should be obtained;

(ii) if inhalation equipment is used in conjunction with parenteral conscious sedation, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained;

(v) pre-treatment physical evaluation must be performed as deemed appropriate;

(vi) specific dietary restrictions must be delineated based on the technique used and patient's physical status;

(vii) appropriate verbal or written instructions regarding the procedure must be given to the patient and/or guardian;

(viii) an intravenous line must be established and secured throughout a procedure utilizing an intravenous conscious sedation technique and should be maintained with other parenteral conscious sedation techniques when the patient's physical or medical condition warrants, except as provided in subsection (b)(3)(F) of this section.

(C) Personnel Requirements and Equipment: [~~maintain continuous direct supervision of the sedation procedure and patient vital sign monitoring during the course of the procedure;~~]

(i) during the administration of parenteral conscious sedation the dentist and at least one member of the assistant staff who is currently competent in Basic Life Support (BLS) must be present;

(ii) any inhalation equipment utilized in conjunction with parenteral conscious sedation must have a fail safe system that is appropriately checked and calibrated;

(iii) if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized;

(iv) the inhalation equipment must have an appropriate nitrous oxide/oxygen scavenging system;

(v) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation. Maintain personal supervision of the patient during the induction of parenteral conscious sedation and during maintenance of parenteral conscious sedation for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the parenteral conscious sedation care, he/she shall be under the direct supervision of the dentist in the dental office. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care. [maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross;]

(i) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry.

(ii) Ventilation. Must perform observation of chest excursions and/or auscultation of breath sounds.

(iii) Circulation.

(I) Shall take and record blood pressure and pulse continually at least every 15 minutes;

(II) Shall perform continuous EKG monitoring of all patients whose physical status classification is ASA III or ASA IV throughout the procedure, or when the patients medical condition warrants.

(iv) Documentation. A written time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral conscious sedation should be documented.

(E) Recovery and Discharge. [in utilizing parenteral conscious sedation via an intravenous (IV) route of administration, the dentist shall:]

(i) oxygen and suction equipment must be immediately available in the recovery area and/or operator; [maintain personal supervision of the patient during the induction of conscious sedation and for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a certified registered nurse anesthetist (CRNA) provides the conscious sedation care, he/she shall be under the direct supervision of the dentist. Delegation of personal supervision may occur if a second dentist or anesthesiologist is delivering the anesthesia care.]

(ii) continual monitoring of vital signs when the anesthetic is no longer being administered; i.e., the patient must have continuous supervision until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the facility; [utilize visual and mechanical methods for vital sign monitoring which shall include, but shall not necessarily be limited to, pulse rate, patient color texture, blood pressure, respiration, blood and tissue oxygenation. Mechanical monitoring shall include a minimum of pulse oximetry;]

(iii) the dentist must determine and provide for documentation that oxygenation, ventilation, circulation, activity, skin color and level of consciousness are appropriate and stable prior to discharge;

(iv) must provide explanation and documentation of postoperative instructions to patient and/or a responsible adult at time of discharge;

(v) the dentist must determine that the patient has met discharge criteria prior to leaving the office.

(F) Special situations include multiple/combination techniques and types of special patients. In selected circumstances, parenteral conscious sedation may be utilized without establishing an indwelling intravenous line. These circumstances include sedation for very brief procedures; young children managed entirely by non-intravenous techniques; or the establishment of intravenous access after sedation has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care. When these situations occur, the dentist responsible for administering parenteral conscious sedation should document the reasons preventing the recommended preoperative or intraoperative management. [maintain direct supervision of auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation; and]

(G) Emergency Management. [not allow a parenteral conscious sedation procedure to be performed in his/her office by a certified registered nurse anesthetist (CRNA) unless the dentist holds a permit for the procedure being performed issued by the Texas State Board of Dental Examiners.]

(i) the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;

(ii) advanced airway equipment, resuscitation medications must be available.

(c) Parenteral deep sedation and/or general anesthesia. To induce and maintain parenteral deep sedation/general anesthesia on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional Requirements: [deep sedation/general anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a certified registered nurse anesthetist licensed in Texas. (see paragraph (3) (G) of this subsection-)]

(A) Each dentist wishing to utilize either of these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral deep sedation and/or general anesthesia after having met the education requirements as detailed in rule 109.174 (g)(3) of this chapter (relating to Sedation/Anesthesia Permit).

(B) Parenteral deep sedation/general anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in rule 109.173 of this chapter (relating to Minimum Standard of Care) and shall in addition: [ professional requirements are as follows]

(A) adhere to the clinical requirements as detailed in subsection (c)(3) of this section; [has completed a minimum of one year of advanced training in anesthesia and related academic

subjects beyond the undergraduate dental school level in a training program as described in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" of the American Dental Association Council on Dental Education; or]

(B) maintain a written parenteral deep sedation and/or general anesthesia consent for each dental patient on whom each procedure is performed, such consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death;[has completed an approved graduate program by the Commission on Dental Accreditation of the American Dental Association where training to competency in general anesthesia is a minimum standard in the training guidelines and maintains an equivalency to one year of anesthesia training (oral and maxillofacial surgery); or]

(C) maintain a time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and shall include physiologic vital sign monitoring during the course of the procedure;[has completed the requirements for admission to and has passed the fellowship exam in the American Dental Society of Anesthesiology.]

(D) maintain under continuous direct supervision a minimum of two auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral deep sedation and/or general anesthesia;

(E) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross;

(F) not allow a parenteral deep sedation and/or general anesthesia procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral deep sedation and/or general anesthesia: [Standard of care requirements. Each dentist shall utilize the following standard of care in addition to the minimum standards noted in 109.173 of this title (relating to Minimum Standard of Care):]

(A) Patient Evaluation. Patients subjected to parenteral deep sedation/general anesthesia must be suitably evaluated prior to the start of any sedative/anesthetic procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV), consultation with their primary care physician or consulting medical specialist regarding potential procedure risk or special monitoring should be considered. [maintain an informed deep sedation/general anesthesia consent by each dental patient on whom this technique is performed, which consent shall specify that the risks related to the procedure include brain damage and death;]

(B) Pre-Procedure preparation, informed consent:[maintain an adequate written anesthesia record which shall include, but shall not necessarily be limited to, physiologic vital signs and all medications administered during the course of the procedure;]

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of any sedative agents and the appropriate informed consent should be obtained;

(ii) if inhalation equipment is used in conjunction with parenteral deep sedation and/or general anesthesia, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained;

(v) pre-treatment physical evaluation should be performed as deemed appropriate;

(vi) specific dietary restrictions must be delineated based on technique used and patient's physical status;

(vii) appropriate verbal or written instructions regarding the procedure must be given to the patient and/or guardian;

(viii) an intravenous line which is secured throughout the procedure must be established, except as provided in subsection (c)(3)(F) of this section.

(C) Personnel and Equipment Requirements:[maintain personal supervision of the patient during the induction and maintenance of the anesthesia. When a certified registered nurse anesthetist (CRNA) provides the deep sedation/anesthesia care, he/she shall be under the direct supervision of the dentist. Delegation of personal supervision may occur if a second dentist or anesthesiologist is delivering the deep sedation/anesthesia care. Vital sign monitoring shall utilize visual and mechanical methods which shall include, but shall not necessarily be limited to, pulse rate, patient color/texture, blood pressure, respiration, blood and tissue oxygenation, and heart rhythm. Mechanical monitoring shall include a minimum of pulse oximetry and an electrocardioscope.]

(i) a provider permitted to administer parenteral deep sedation and/or general anesthesia shall be designated to be in charge of the administration of anesthesia care;

(ii) two additional individuals who are currently certified in basic cardiopulmonary resuscitation or its equivalent, one of whom is trained in patient monitoring shall be present for the delivery of anesthesia care;

(iii) when the same individual administering the parenteral deep sedation and/or general anesthesia is performing the dental/oral and maxillofacial procedure, one of the additional two individuals present for the delivery of anesthesia care must monitor the patient and record required information on the anesthesia record;

(iv) equipment suitable to provide advanced airway management and advanced life support should be on premises and available for use.

(v) any inhalation equipment utilized in conjunction with parenteral deep sedation/general anesthesia must have a fail safe system that is appropriately checked and calibrated.

(vi) if nitrous oxide/oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized.

(vii) the inhalation equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(viii) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation. Maintain personal supervision of the patient during the induction and maintenance

nance of parenteral deep sedation and/or general anesthesia and during maintenance of parenteral deep sedation and/or general anesthesia for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the anesthesia care, he/she shall be under the direct supervision of the dentist in the dental office. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care. ~~[maintain original certification in advanced cardiac life support from a course sponsored by the American Heart Association. The dentist shall require his/her assistant staff to maintain current certification in basic life support as obtained by courses offered by the American Heart Association or the American Red Cross;]~~

(i) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygenation saturation shall be evaluated continuously by pulse oximetry;

(ii) Ventilation. Intubated patient - must auscultate breath sounds and monitor of end-tidal CO<sub>2</sub>. Non-intubated patient - auscultation of breath sounds, observation of chest excursions and/or monitoring of end-tidal CO<sub>2</sub>;

(iii) Circulation. Continuous EKG monitoring of all patients throughout the procedure with electrocardioscopy shall occur. Shall record blood pressure and pulse continually at least every five minutes;

(iv) Temperature. A device capable of measuring body temperature should be readily available, if needed, during the administration of parenteral deep sedation/general anesthesia. When agents implicated in precipitating malignant hyperthermia are utilized, continual monitoring of body temperature must be performed;

(v) Documentation. A written time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral deep sedation/general anesthesia should be documented.

(E) Recovery and Discharge: ~~[maintain the necessary emergency equipment and medications to perform advanced cardiac life support under the guidelines of the American Heart Association (airway equipment, required intravenous equipment and medication, defibrillator, electrocardioscope, etc.)]~~

(i) oxygen and suction equipment must be immediately available in the recovery area and/or operator;

(ii) continual monitoring of vital signs when the anesthetic is no longer being administered, i.e., the patient must have continuous supervision until oxygenation, ventilation, circulation and temperature, as indicated, are stable and the patient is appropriately responsive for discharge from the facility;

(iii) the dentist must determine and document that oxygenation, ventilation, circulation activity, skin color, level of consciousness and temperature, as indicated, are stable prior to discharge;

(iv) must provide explanation and documentation of post-operative instructions to patient and/or a responsible adult at the time of discharge.

(v) the dentist must determine and provide for documentation that the patient has met discharge criteria prior to leaving the office.

(F) Special situations include multiple/combination techniques and types of special patients;~~[maintain a minimum of two auxiliary personnel who shall be capable of reasonably assisting in~~

~~procedures, problems, and emergencies incident to the use of deep sedation/general anesthesia; and]~~

(i) In selected circumstances, parenteral deep sedation/general anesthesia may be utilized without first establishing an indwelling intravenous line. These circumstances include parenteral deep sedation/general anesthesia for very brief procedures, or brief periods of time, which, for example, may occur in some pediatric patients; or the establishment of intravenous access after parenteral deep sedation/general anesthesia has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care. When these situations occur, the dentist responsible for administering parenteral deep sedation/general anesthesia should document the reasons preventing the recommended preoperative of intraoperative management.

(ii) Due to the fact that many dental patients undergoing parenteral deep sedation/general anesthesia are mentally and/or physically challenged, it is not always possible to suitably evaluate these patients prior to administering care. When these situations occur, the dentist responsible for administering the parenteral deep sedation/general anesthesia should document the reasons preventing the recommended preoperative management.

(G) Emergency Management: ~~[not allow a deep sedation/general anesthesia procedure to be performed on a dental patient in his/her office by a certified registered nurse anesthetist (CRNA) unless the dentist maintains a permit for deep sedation/general anesthesia issued by the Texas State Board of Dental Examiners]~~

(i) the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral deep sedation and/or general anesthesia including immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;

(ii) advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available;

(iii) appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

This 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 August 24, 1998.

TRD-9813444

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 1998

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



## Subchapter S. Mobile Dental Facilities and Portable Dental Units

### 22 TAC §§109.400–109.403

The State Board of Dental Examiners proposes new subchapter S, Mobile Dental Facilities and Portable Dental Units, new



§109.400, §109.401, §109.402, §109.403, to TAC Chapter 109 concerning provisions of dental services through use of mobile and portable facilities.

Douglas A. Beran, Executive Director, State Board of Dental Examiners (SBDE), has determined for the first five-year period the rules are in effect there will be fiscal implications for state or local government as a result of enforcing the rules. One fiscal implication will be contingent upon the number of annual permits a state or local government entity applies for and the annual application fees for those permits pursuant to Rule 109.402(a), Obtaining a Permit. A second fiscal implication will be contingent upon the equipment the state or local government entity may have to purchase to comply with proposed Rule 109.402(b)(8).

Mr. Beran has determined that for each year of the first five years the new subchapter is in effect the public benefit anticipated as a result of enforcing the rules will be that portable and mobile dental facilities will be permitted initially and renewed annually and thus meet requirements of this subchapter. Further, the effect of enforcement will be to assure a minimum quality of care and follow-up for individuals who receive dental care from dentists providing care either through a mobile dental facility or through a portable dental unit by providing that (1) dental care is provided by qualified dental personnel in conformity with state statutes and regulations; (2) patient records are safeguarded; (3) provisions are made for emergency and follow-up care; (4) an audit trail exists of patients served and services provided; (5) dental services are provided in a clean environment; and that (6) the SBDE may cancel a permit upon a determination of non-compliance with the Dental Practice Act or the SBDE's rules and regulations after an investigation and after an opportunity for a hearing.

Similar to the fiscal implications for state and local government, there will be fiscal implications for small businesses, viz., annual permit application fees and equipment purchases. Such costs, however, assure a minimum quality of care that is reasonable for the public's safety. These costs, however, are not so negative as to impact the economic viability of a small business. Therefore, the SBDE has determined that compliance with the proposed rules will have not have an adverse economic impact on small businesses as the cost of compliance, if any, will be minimal.

Comments on the proposals may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before October 5, 1998.

The new rules are proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, Article 4543§2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548k§2 which allows dentists to maintain multiple offices so long as they are maintained in compliance with Board rules.

The proposed new rules do not affect other statutes, articles, or codes.

#### §109.400. Permit Required.

(a) Every mobile dental facility, and, except as provided herein, every portable dental unit operated in Texas by any entity must

have a permit as provided in subchapter S, Mobile Dental Facilities and Portable Dental Units.

(b) Licensees who do not have a permit for a portable dental unit or who are employed by a dental organization not having a portable dental unit permit may provide dental services through use of dental instruments and equipment taken out of a dental office without a permit if:

(1) The service is provided as emergency treatment;

(2) A patient of record of the licensee or organization is treated outside of the dental office;

(3) Treatment is provided to residents of nursing homes or convalescent facilities; or,

(4) Treatment is provided without charge to patients or to any third party payer, so long as such treatment is not provided out of the office on a regular basis.

#### §109.401. Definitions.

The following words and terms, when used in subchapter S, Mobile Dental Facilities and Portable Dental Units, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mobile Dental Facility - any self-contained facility in which dentistry will be practiced which may be moved, towed, or transported from one location to another.

(2) Portable Dental Unit - any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location, including, but not limited to, other dentists' offices, patients' homes, schools, nursing homes, or other institutions.

(3) Permit Holder - a licensed Texas dentist or an organization authorized by the Dental Practice Act to employ licensed Texas dentists to whom the permit is issued as provided in subchapter S, Mobile Dental Facilities and Portable Dental Units.

(4) Session - a period of time during which personnel associated with a permitted facility or unit are available to provide dental services at a location.

#### §109.402. Obtaining a Permit.

(a) A licensed Texas dentist, or an organization authorized to hire dentists as detailed in Rule 107.300 of this title (relating to Registration of Non-Profit Corporations Authorized to Hire Dentists) wishing to operate a mobile dental facility or a portable dental unit, shall apply to the State Board of Dental Examiners (SBDE) for a permit on a form provided by the Board and pay an application fee in an amount set by the Board. A governmental entity may obtain a single permit, for all facilities; or all units, listed on an application.

(b) A completed application form submitted to the SBDE with all questions answered will be reviewed and if all the requirements listed in this section are met, a permit will be issued. The application must include:

(1) An address of record that is not a post office box;

(2) the name and address of the permit holder;

(3) the name and address, and when applicable, the license number of each dentist, dental hygienist, laboratory technician, and dental assistant associated with the facility or unit for which a permit is sought;

(4) a copy of a written agreement for emergency follow-up care for patients treated in the mobile dental facility, or through a portable dental unit, and such agreement must include identification of

and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

(5) a statement that the mobile dental facility or portable dental unit has access to communication facilities which will enable dental personnel to contact assistance as needed in the event of an emergency;

(6) a statement that the mobile dental facility or portable dental unit conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction standards, including required or suitable access for disabled individuals, sanitation, and zoning;

(7) a statement that the applicant possesses all applicable county and city licenses or permits to operate the facility or unit;

(8) either a statement that the unit will only be used in dental offices of the applicant or other licensed dentists, or a list of all equipment to be contained and used in the mobile dental facility or portable dental unit, which must include:

(A) dental treatment chair;

(B) a dental treatment light;

(C) when radiographs are to be made by the mobile dental facility or portable dental unit, a stable portable radiographic unit that is properly monitored by the authorized agency;

(D) when radiographs are to be made by the mobile dental facility or portable dental unit, a lead apron;

(E) a portable delivery system, or an integrated system if used in a mobile dental facility;

(F) an evacuation unit suitable for dental or surgical use; and,

(9) a list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc., that are on hand.

§109.403. Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units.

(a) A permit holder is required to operate a permitted mobile dental facility or portable dental unit in compliance with all state statutes and regulations. Further, a permit holder shall:

(1) In writing, notify the SBDE of a change in any address required in Rule 109.402 (b) (1) of this chapter (relating to Obtaining a Permit) within sixty days of the change;

(2) In writing, notify the SBDE of a change in any personnel listed as required by Rule 109.402 (b) (2) of this chapter (relating to Obtaining a Permit) within thirty days of any such change;

(3) Prominently display all dental and dental hygienist licenses, mobile dental facility or portable dental unit permits, or copies of permits if one permit is issued for multiple facilities or units, a consumer information sign as described in Rule 109.10 of this chapter (relating to Consumer Information) in compliance with the Dental Practice Act and/or the rules and regulations of the SBDE, provided, however, that a licensee may display a copy of the original dental or dental hygiene license that is certified by a notary public as a true and correct duplicate of the original;

(4) Before beginning a session at any location arrange for

(A) access to a properly functioning sterilization system;

(B) ready access to an adequate supply of potable water; and

(C) ready access to toilet facilities;

(5) On the tenth work day of January, April, July and October of each year, file with the SBDE a written report for the preceding quarter detailing the location, including a street address, the dates of each session, and the number of patients served and the types of dental procedures and quantity of each service provided.

(6) Insure that all written or printed materials available from or issued by the mobile dental facility or portable dental unit contain the official address of record for the mobile dental facility or mobile dental unit;

(7) Maintain all dental records and official records at the official address of record for the facility or unit; and

(8) Operate a mobile dental facility or portable dental unit only when all requirements described in Rule 109.402 of this chapter (relating to Obtaining a Permit) are being met.

(b) A permit to operate a mobile dental facility or portable dental unit expires one year after the issuance date, or on the date when the permit holder is no longer associated with the mobile dental facility or portable dental unit, whichever is first.

(c) A permit holder may renew a permit by submitting an annual application, and payment of required fee.

(d) Upon cessation of operations by the mobile dental facility or portable dental unit, the permit holder shall notify the SBDE of the final disposition of patient records and charts.

(e) A permit to operate a mobile dental facility or portable dental unit is not transferable.

(f) The SBDE may cancel a permit if upon an investigation and after opportunity for a hearing, a determination is made of non-compliance with the Dental Practice Act or the SBDE's rules and regulations.

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

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Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

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

## TITLE 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation

#### Chapter 419. Medicaid State Operating Agency Responsibilities

##### Subchapter G. Medicaid Fair Hearings

25 TAC §§419.301-419.317

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§419.301 - 419.317 of new Chapter 419, Subchapter G, concerning Medicaid fair hearings.

The subchapter describes the procedures for Medicaid fair hearings conducted by TDMHMR and are consistent with the federal regulations concerning fair hearings as described in 42 CFR Subpart E, §§431.200 et. seq.

Donald C. Green, Chief Financial Officer, has determined that for each year of the first five years the new sections as proposed are in effect, enforcing or administering the new sections does not have foreseeable implications relating to cost or revenues of state or local government.

Ernest McKenney, director, Medicaid Administration, has determined that for each of the first five years the proposed new sections are in effect the public benefit anticipated is the implementation of fair hearing procedures that are uniform for all operating agencies. For each of the first five years the new sections are in effect there would be no additional economic cost to persons required to comply as a result of the proposed new sections. There will be no effect on small businesses because small businesses will not participate in the administration of fair hearings for Medicaid recipients.

TDMHMR has determined that administering or enforcing the new sections as proposed will not affect local economies.

A public hearing will be held at 9:00 a.m. on Tuesday, September 22 1998, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Oral and written testimony will also be accepted on the Health and Human Services Commission's rules governing the same matter, 1 TAC §§357.1 - 357.29, which will be proposed in an upcoming issue of the *Texas Register*. Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Sheila Wilkins, Office of Policy Development, at (512) 206-4516, or should call the TDY phone number of Texas Relay, which is 1-800-735-2988, within 72 hours prior to the public hearing.

Written comments on the proposal may be sent to Stacy Sallee, Associate Counsel, Health and Human Services Commission, 4900 N. Lamar Blvd. 4th floor, Austin, Texas 78751, within 30 days of publication.

These sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; the Texas Human Resources Code, §32.021, which provides TDMHMR with authority to adopt necessary rules for the proper and efficient operation of Medicaid programs for which it is the operating agency; and the Texas Government Code, §531.024, which requires the promulgation of uniform fair hearings rules for all Medicaid-funded services.

These sections would affect the Texas Government Code, §531.024.

§419.301. Purpose and Scope.

(a) Purpose. The Texas Health and Human Services Commission (HHSC) is required by state law to promulgate uniform fair hearing rules for all Medicaid-funded services. An opportunity for a fair hearing is required by federal law and regulation in any Medicaid case for a person whose claim for services is denied or not acted upon promptly. An opportunity for a fair hearing is

also required when an operating agency or its designee takes action to suspend, terminate, or reduce services, including a denial of a prior authorization request for Medicaid-covered services. These fair hearing rules will also apply to any hearing involving the transfer or discharge of a person from a nursing facility or to a person adversely affected by the preadmission screening and annual resident review requirements.

(b) Scope. These rules establish fair hearing procedures which an operating agency will follow when the operating agency is required to conduct a fair hearing for Medicaid-funded services.

§419.302. Definitions.

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

(1) Action - A termination, suspension, or reduction of Medicaid eligibility or covered services by an operating agency or its designee. "Action" includes the denial of Medicaid eligibility and the denial of program eligibility. The term also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by an operating agency or its designee with regard to the preadmission screening and annual resident review. "Action" includes a denial of a prior authorization request for covered services affecting an individual. The term also includes the failure of an operating agency or its designee to act upon an individual's request for Medicaid covered services or for an eligibility determination within a reasonable amount of time. "Action" does not include expiration of a time-limited service.

(2) Adverse determination - A determination that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

(3) Date of action - The intended date on which a termination, suspension, reduction, transfer, or discharge becomes effective. It also means the date of the determination made by an operating agency with regard to the preadmission screening and resident review.

(4) Designee - A contractor of an operating agency authorized to take an action or adverse determination as defined in this section on behalf of the operating agency.

(5) Medicaid eligibility - The eligibility of an individual to receive services under the Texas Medicaid program.

(6) Operating agency - A state agency operating part of the Title XIX (Medicaid) program under the Social Security Act and includes the Texas Department of Health, the Texas Department of Human Services, the Texas Rehabilitation Commission, and the Texas Department of Mental Health and Mental Retardation.

(7) Prior authorization request - A request for services that are reimbursable only when authorization or approval is obtained before services are rendered. Prior authorized services may be limited in duration, scope, and amount. Services provided beyond those authorized are not reimbursable. If a prior authorization is limited in duration, scope, or amount, a separate request and approval must be obtained for each prior authorized service.

(8) Program eligibility - The eligibility of an individual to receive services within a particular Medicaid program.

§419.303. Notice.

(a) Agency Notice. If the action of the operating agency or its designee is the denial of Medicaid or program eligibility or the

denial of a prior authorization request, at the time of the action, the operating agency or its designee shall give an individual written notice of the individual's right to request a fair hearing on the action. If the operating agency or its designee proposes to take any other action, except for failing to act upon an individual's request for Medicaid covered services or for an eligibility determination within a reasonable amount of time, the operating agency or its designee shall deliver to the individual notice of the individual's right to request a hearing at least ten (10) days prior to the date of action, unless the circumstances in subsection (b) otherwise provide.

(b) Exceptions. The operating agency or its designee may mail written notice to an individual not later than the date of action if:

(1) the operating agency or its designee has factual information confirming the death of the individual;

(2) the operating agency or its designee receives a clear written statement signed by the individual that:

(A) he or she no longer wishes services; or

(B) gives information that requires termination or reduction in services and indicates that he or she understands that this must be the result of supplying that information;

(3) the individual has been admitted to an institution where he or she is ineligible for further services;

(4) the individual's whereabouts are unknown and the post office returns agency or designee mail directed to him or her indicating no forwarding address;

(5) the operating agency or its designee establishes the fact that the individual has been accepted for Medicaid services by another state;

(6) a change in the level of medical care is prescribed by the individual's physician;

(7) the notice involves an adverse determination made with regard to the preadmission screening requirements; or

(8) the action is the transfer or discharge of a resident from a nursing facility and the date of action will occur in less than ten (10) days pursuant to 42 CFR §483.12(a)(5)(ii) because:

(A) the safety or health of individuals in the facility would be endangered;

(B) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(C) an immediate transfer or discharge is required by the resident's medical needs; or

(D) a resident has not resided in the facility for thirty (30) days.

(c) Content of Notice. The notice shall contain:

(1) the action that the operating agency, its designee, or nursing facility is taking in the case of a denial of Medicaid or Program eligibility or a denial of a prior authorization request or intends to take in the case of any other action except for failing to act upon an individual's request for Medicaid covered services or for an eligibility determination within a reasonable amount of time;

(2) a statement of the reason for the action;

(3) a reference to the statutory or regulatory authority supporting the action, or the change in federal or state law that requires the action;

(4) an explanation of the individual's right to request a hearing and the procedure for requesting same;

(5) a statement that the individual may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson; and

(6) an explanation of the circumstances under which Medicaid is continued, or a transfer or discharge is deferred, if a hearing is requested.

(d) Timeframe for Requesting a Hearing. The operating agency and its designee must allow the individual to request a hearing within 90 days from the date the notice required under subsection (a) of this section is mailed.

(1) The request for hearing must be submitted according to the instructions provided in the notice sent to the individual under subsection (a) of this section.

(2) It is a rebuttable presumption that a notice is received five (5) days after the date the notice is placed in the United States mail, postage prepaid, properly addressed.

(3) If a request for a hearing is not received before the date of action, the action may be taken or allowed.

(4) If a request for hearing is not received within the 90-day period, the individual is deemed to have waived the hearing and the action becomes final.

(5) If the action is other than a denial of Medicaid or program eligibility or a denial of a prior authorization request and a request for hearing is received before the date of action, the action will not be taken until the final decision of the fair hearing has been made, unless the basis for the action is a change in federal or state law or regulation.

*§419.304. Maintaining Benefits or Services.*

(a) Except as otherwise specified in subsections (b), (d) and (e) of this section, if the individual is currently receiving a service upon which an action is taken and requests a fair hearing before the date of action, the service will be continued until a final decision is rendered following a fair hearing.

(b) The operating agency or its designee may terminate or reduce services before a hearing decision is rendered if:

(1) it is determined at the fair hearing that the sole issue is one of state or federal law or policy; and

(2) the operating agency or its designee informs the individual in writing of its intent to reduce or terminate services pending the hearing decision at least five (5) days before the termination or reduction would be effective.

(c) The operating agency or its designee may recover or recoup the cost of any services provided to the individual to the extent that the services were furnished solely by reason of this section if the fair hearing decision supports the operating agency's or designee's action.

(d) If notice is mailed under §419.303(b) of this title (relating to Notice) and the operating agency or its designee receives the individual's request for a hearing within ten (10) days of the mailing of the notice, and the operating agency or its designee determines that the action resulted from something other than the application of

federal or state law or policy, the operating agency or its designee will reinstate and continue the individual's services until a hearing decision is rendered.

(e) The operating agency or its designee has no obligation to begin services requiring prior authorization pending a final decision.

§419.305. Hearing Official.

The operating agency shall designate an impartial person who has not been directly involved in the initial determination of the action or adverse determination in question as a hearing official to conduct the hearing and render a decision. The decision of the hearing official shall be the final administrative action of the operating agency.

§419.306. Preliminary Matters.

(a) Notification of Hearing. The hearing official shall, at least ten (10) days prior to the date of the hearing, send a written notification of the hearing to the individual who has requested the hearing.

(1) This notice will be sent to the address of record for the individual or to the address indicated in the request for hearing.

(2) The notification shall contain:

(A) the basis of the proposed action;

(B) the time, date, and place of the hearing;

(C) a statement that the individual may request the hearing to be conducted based on the taking of oral testimony (an "oral hearing"), or a hearing based on written information contained in any appropriate file and additional information that the individual may wish to submit for consideration (a "document hearing"), as is described in §419.309 of this title (relating to Document Hearing); and

(D) a statement that the individual may request any reasonable accommodation required due to disability or language comprehension.

(b) Access to Records.

(1) At a reasonable time before and during the hearing, the individual shall be given the opportunity to examine any appropriate file, and other documents or records the operating agency intends to use at the hearing.

(2) If the individual intends to introduce written medical information at the hearing, that information must be submitted to the hearing official at least seven (7) days prior to the hearing, to allow the operating agency to obtain a review of the material by medical staff. The failure to so submit such medical information shall not render the material inadmissible, but the hearing official shall be permitted to keep the hearing record open until a medical review of the material has been received from the operating agency and included in the hearing record.

(c) Representation. An individual may represent himself, or be represented by legal counsel, a relative, a friend, or other designated spokesperson. If the individual does not appear at the hearing, the operating agency may require the submission of documentation demonstrating that the representative appearing on the individual's behalf has authority to represent the individual. If the individual appears at the hearing, no such documentation is required.

(d) Additional Medical Assessment. If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, and if the hearing officer considers it necessary to have a medical assessment other than that of the person involved in making the original decision,

that medical assessment must be obtained at the operating agency's expense and made part of the record.

§419.307. Location of Hearing and Accommodations.

(a) The hearing official shall determine the location of the hearing or whether it is appropriate to conduct the hearing by telecommunication as provided in §419.308 of this title (relating to Telecommunication).

(b) The operating agency shall provide any reasonable accommodation for disclosed disabilities. Requests for any reasonable accommodation should be made in writing to the hearing official at least three (3) days prior to the hearing date.

(c) The operating agency shall provide suitable interpretation for individuals with limited English proficiency. Requests for an interpreter should be made in writing to the hearing officer at least three (3) days prior to the hearing date.

§419.308. Telecommunication.

(a) If the hearing is an oral hearing and if telecommunication equipment is used for the hearing, it must be capable of allowing the parties to hear and speak to all other parties and to cross-examine witnesses.

(b) The hearing official must be able to hear and speak to all parties.

(c) Written documents to be submitted for consideration by the hearing official must be provided to all parties in advance of the hearing, with copies to the hearing official.

(d) If an individual cannot effectively participate in a telephonic hearing because of a disability, the individual may request that the hearing be conducted in person.

§419.309. Document Hearing.

The hearing may be conducted based on the written information contained in any appropriate file and additional written information submitted to the hearing official and the other party not less than seven (7) days prior to the hearing without the necessity of taking oral testimony, provided that the parties are given the opportunity to respond to any written material submitted.

§419.310. Privileges.

No party to a fair hearing is required to disclose communications between a lawyer and a client, a husband and a wife, a clergy-person and a person seeking spiritual advice, or the name of an informant, or other information protected from being divulged by federal or state substantive law.

§419.311. Burden of Proof.

(a) The operating agency bears the burden of proof in a fair hearing on an action or an adverse determination.

(b) The nursing facility bears the burden of proof in a transfer or discharge case.

(c) The individual bears the burden on any issue requiring the showing of "good cause" or an affirmative defense to the action or adverse determination.

§419.312. Procedural Rights of the Individual.

The individual has the right to:

(1) examine at a reasonable time before the date of the hearing and during the hearing the contents of any appropriate file, and all documents and records to be used by the operating agency or nursing facility at the hearing;

- (2) bring witnesses;
- (3) establish all pertinent facts and circumstances;
- (4) present an argument without undue interference; and
- (5) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

§419.313. Dismissal of Hearing.

The hearing official shall dismiss a request for a fair hearing and the proposed action may be taken if the individual withdraws the request in writing or fails to appear at the scheduled hearing without good cause.

§419.314. Recording.

The hearing official shall make a record of the proceeding, either through a tape recording or a court reporter.

(1) The cost of a court reporter shall be borne by the person who requests that a court reporter be present.

(2) The individual shall have the right to make an audio recording of the fair hearing.

(3) Any witness shall have the right to make an audio recording of his or her testimony.

§419.315. Hearing Decisions.

(a) Hearing decisions must be based exclusively on evidence introduced at the hearing and received in evidence.

(b) The operating agency or its designee may grant, deny, terminate, suspend, modify, or reduce services in accordance with the hearing decision as rendered following a fair hearing.

(c) Record. The record of the hearing consists of the following.

(1) A transcript or recording of testimony and exhibits received in evidence.

(2) All documents and requests for admission, together with the ruling on admissibility made by the hearing official.

(3) The hearing officer's decision, composed of a statement of the persuasive evidence, findings of fact and conclusions of law (identifying the relevant regulations and/or statutes), and a statement of restored benefits, if appropriate.

(d) The hearing decision must be made and a copy of the decision furnished to the individual within 90 days of the request for a fair hearing unless the individual waives the 90-day requirement in writing.

(e) If the individual is enrolled in a managed care organization (MCO), the operating agency will also notify the MCO of its decision. The decision of the operating agency is binding on the MCO and on any applicable designee.

(f) Hearing decisions are available to the public, subject to the requirements under federal and/or state law for safeguarding information relating to the Medicaid program.

§419.316. References.

Reference is made in this subchapter to 42 CFR §481.12(a)(5)(ii).

§419.317. Distribution.

This subchapter governing Medicaid fair hearings shall be distributed to:

- (1) members of the Texas Board of Mental Health and Mental Retardation;

- (2) executive, management, and program staff at Central Office;
- (3) Medicaid providers;
- (4) persons designated as hearing officials;
- (5) upon request, any party to a fair hearing conducted under this subchapter; and
- (6) advocates and advocacy organizations.

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

Filed with the Office of the Secretary of State, on August 24, 1998.

TRD-9813446

Charles Cooper  
Chairman

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: October 4, 1998

For further information, please call: (512) 206-4516

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## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 122. Federal Operating Permits

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §122.10, concerning General Definitions, §122.130, concerning Initial Application Due Dates, §122.134, concerning Complete Application, §122.201, concerning Initial Permit Issuance, §122.501, concerning General Operating Permits, §122.503, concerning Application Revisions for Changes at a Site, §122.504, concerning Application Revisions When a General Operating Permit is Revised or Repealed, §122.506, concerning Public Notice for General Operating Permits, §122.508, concerning Notice and Comment Hearings for General Operating Permits, and new §122.509, concerning Public Announcement for General Operating Permits, and new §122.510, concerning General Operating Permits Adopted by the Commission.

#### EXPLANATION OF THE PROPOSED RULES

This proposal would establish new procedures for developing general operating permits (GOPs) under 30 TAC Chapter 122, concerning Federal Operating Permits. This proposal will also amend the Chapter 122 full program application schedule for GOPs. Chapter 122, the state regulation that implements the Federal Operating Permits Program in Texas, was originally adopted September 20, 1993, and revised to be effective November 10, 1997. Chapter 122 is based on Title 40 Code of Federal Regulations Part 70 (40 CFR 70), which was promulgated by the United States Environmental Protection Agency (EPA) to establish the minimum elements of the federal operating permits program, as required by Title V of the Federal Clean Air Act Amendments of 1990 (FCAA). The goal of the federal operating permits program is to provide a compliance and enforcement tool by codifying all applicable requirements for the control of air pollution at a specific site into an operating permit.

General operating permits are an alternate permitting mechanism provided for in Chapter 122, consistent with 40 CFR 70 requirements that authorize the operation of multiple sites that are similar in terms of operations, processes, and emissions. For the Chapter 122 interim program, four GOPs were developed for oil and gas industry sites and one GOP was developed for the bulk fuel terminal industry sites. These GOPs currently reside in §§122.511-122.515, respectively. One GOP was developed for the Chapter 122 full program and is available to owners or operators of sites that have only site-wide requirements. This GOP resides in §122.516. These GOPs have so far been a very successful mechanism for streamlining the permitting of certain sites subject to Chapter 122.

The existing GOPs are permits by rule and were adopted through the rulemaking process consistent with the requirements of the Texas Administrative Procedure Act (APA) and 40 CFR 70, which require a 30-day public comment period including an opportunity to request a notice and comment hearing, an affected state review, and a 45-day EPA review. In addition, a 60-day public petition period, during which the public may petition EPA to object to a permit, begins after the 45-day EPA review period and may extend after permit issuance. These procedural requirements were satisfied when the GOPs were adopted. Subsequently, each time an applicant applies for authorization to operate under a GOP, the executive director need only review the application to ensure that the site qualifies for the GOP. Individual applications are then not subject to public notice, affected state review, EPA review, and public petition requirements, since these procedural requirements occurred during the rulemaking process. These individual applications, however, are subject to the Texas Clean Air Act procedural requirement to submit a notice of the application to the state senator and representative who represent the area in which the site is or will be located.

The purpose of the operating permits program is to codify applicable requirements. Applicable requirements may periodically be revised, repealed, or updated. For example, the EPA may revise new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAPS), and maximum available control technology (MACT) standards. The commission periodically revises the reasonably available control technology (RACT) standards (e.g., 30 TAC Chapters 111, 112, and 115). Facilities operating under GOPs would be required to comply with the revised applicable requirements by writing provisional terms and conditions, even though the revised applicable requirements have not been codified into the GOP through rulemaking. This situation can cause confusion for regulated industries, the public, and commission enforcement personnel, since the language in the GOP (which is currently in a rule) would necessarily lag behind any recent revisions to the applicable requirements codified in the GOP. Since GOPs currently reside in Chapter 122, it takes a second rulemaking and, at a minimum, four to six months to revise the GOP. By authorizing the executive director to amend a GOP, the commission can more quickly update permits and omit a second rulemaking. For example, once an update to a GOP is completed, the applicable requirements may have been again revised and the new GOP will not reflect all current applicable requirements. By removing the GOPs themselves from Chapter 122 and authorizing the executive director to revise a GOP, the GOPs can be quickly updated, thereby eliminating a significant time delay in incorporating revisions to the codified applicable requirements. This will assist the regulated industries, since they will not have

to maintain provisional terms and conditions for lengthy periods of time. Resources that would be dedicated to revising the rules through the formal rulemaking process can be directed to review of applications. The commission emphasizes that this proposal will not eliminate opportunity for public comment on proposed changes in the underlying applicable requirements since such changes, whether done on a state or federal level, are made using the traditional rulemaking process. Further, the proposed rule establishes a process for the revision of the GOPs by the executive director which is similar to the process used for revisions to site operating plans.

As the result of concern over the amount of rulemaking involved in maintaining GOPs, the commission is proposing new procedures for establishing GOPs. These procedures are similar to those for the Texas Pollution Discharge Elimination System general permits in that they provide for GOPs that do not involve rulemaking. The proposed amendments allow the executive director to issue GOPs and will remove the requirement for GOPs to be adopted by the commission through rulemaking. This would allow the executive director to quickly issue and revise GOPs without spending time and resources in rulemaking. As a result, the commission will be better able to maintain a current set of applicable requirements in the GOPs. Although this proposal would eliminate rulemaking steps involved in establishing and revising GOPs, the GOPs will continue to be subject to all Chapter 122 procedural requirements. The authority for the GOPs will continue to reside in Chapter 122, Subchapter F. Before issuance by the executive director, the GOP will undergo Chapter 122 procedural requirements, including a 30-day public comment period with an opportunity to request a notice and comment hearing, an affected state review, and a 45-day EPA review. The GOPs will also be subject to a 60-day public petition period, during which the public may petition EPA to object to a permit. Although the specific public notice procedures and notice and comment hearing procedures may vary slightly due to the GOPs being an alternate permitting mechanism, these are the same Chapter 122 requirements applied to site-specific operating permits. This approach will change the commission's procedures for establishing and maintaining GOPs, but will not significantly affect application for and operation under a GOP. If adopted, the proposed procedures will authorize the executive director to establish permits governing multiple similar sites through procedures almost identical to those used for site-specific operating permits.

The proposed rule changes will provide new procedures for establishing GOPs; however, they will not change or repeal any of the current GOPs residing in Chapter 122. This proposal provides the authority for the executive director to issue GOPs and is the first of three steps necessary for the conversion of the GOPs currently contained in Chapter 122, Subchapter F into those issued by the executive director. Once this authority is in place, the executive director will use the new procedures to propose GOPs that will replace those currently residing in Chapter 122, Subchapter F. After the new GOPs have been issued, those in Subchapter F will be repealed.

The change to §122.501(a) would give the executive director authority to issue a GOP. Throughout the proposal, the term "adoption" would be replaced with the term "issuance." The commission proposes to delete references to the Government Code, APA, and Chapter 2001 or 2002 from §122.501(a)(6) and everywhere else it appears in Subchapter F, because these procedures refer to rulemaking. The language in §122.501(b)

would be revised to be consistent with the wording in Chapter 122, Subchapter C, concerning Initial Permit Issuances. Section 122.501(d) would be revised to authorize the executive director to revise a GOP and would establish procedures to revise or rescind a GOP. The proposed language establishes requirements for issuing administrative, minor, and significant permit revisions to GOPs, which are consistent with the requirements in Subchapter C for site-specific permits. Current GOP procedures do not distinguish between administrative, minor, and significant permit revisions, because all revisions to GOPs are subject to rulemaking requirements.

The commission proposes to change language in §122.503(a)(1), as well as in §122.504(a)(1)(B), to indicate that a change in an applicability determination may result in the permit holder having to submit an updated GOP application. These applicability determination changes may be the result of a change at a site or the revision, repeal, or rescission of a GOP. The word "original," used in describing the GOP application, would be deleted from §122.503(a)(1) because after the application has been updated, the original application would no longer be used to verify applicability determinations. The same change is proposed for §122.503(d) and §122.504(g). The current §122.503(a)(2) requires that the GOP application must be updated to account for any typographical errors. This paragraph would be deleted, because the only portions of the GOP application that must be kept up-to-date are the applicability determinations and the basis for those determinations. Any typographical errors or other types of changes in those portions of the application that address applicability determinations are already addressed under §122.503(a)(1). In §122.503(c)(2) and (3), the term "updated application" is proposed to replace the phrase "information required in subsection (b) of this section" and reduce internal references within §122.503. Furthermore, in §122.503(c)(4), the phrase "application required by this subsection" has been replaced with "updated application" for simplicity. Section 122.503(g) refers to "the emission units addressed in the authorization to operate"; however, since the specific emission units are actually addressed in the application rather than the authorization, "authorization to operate" would be replaced with "application." The same change is proposed in §122.504(b).

The current §122.504(a) bases applicability of the section on whether or not the permit holder's authority to operate under a GOP is affected by the revision or repeal of a rule (applicable requirement). In an effort to more clearly define when these requirements apply, the commission proposes to directly state under what circumstances the permit holder's authority can be affected. The permit holder's authority will be affected if the applicability determinations at a site or the basis for the determinations change. This subsection also refers to the revision or repeal of a rule and applies when a rule codified in a GOP is revised or repealed. It will also provide clarity relating application revisions that are necessary due to a revision or rescission of a GOP. Additionally, this proposal would revise the subsection to apply to GOPs that no longer reside in §§122.511-122.515. In subsection (a)(1), the word "must" is proposed to be replaced with "shall" and the adjective "updated" would be added to the reference to the permit application for consistency with §122.503.

Section 122.504(a)(2) currently states that an application containing information required under §122.504(a)(1) must be submitted by the effective date of the revised or repealed GOP.

However, the current §122.504(a)(4) states that §122.504(a)(1) information shall be submitted within 45 days of the compliance date of the new requirement or effective date of the repealed requirement. Since a GOP is a codification of applicable requirements, new or repealed requirements will be in effect before the GOP can be revised to reflect these requirements. Therefore, the information relating to new or repealed requirements will be submitted before the GOP becomes effective. The application deadline in §122.504(a)(2) is then no longer relevant and would be deleted. The requirements of §122.504(a)(4) would also be moved to §122.504(a)(3) and revised to clarify that the specified requirements apply when a revision to a GOP is the result of a change in an applicable requirement or state-only requirement. The requirements in this paragraph would also be subdivided for purposes of clarity. The proposed §122.504(a)(3)(B) would replace the citations listing all the application information with "updated application" to avoid unnecessary internal references. A new §122.504(a)(4) is proposed to address the situation in which a revision to a GOP is not the result of a change in an applicable requirement or a state-only requirement. For example, this paragraph would apply if a GOP were revised to include periodic monitoring requirements or to correct a mistake. In this case, the permit holder would submit an updated application within 45 days of the effective date of the revision. The current §122.504(c) addresses the repeal of GOPs and the current §122.504(d) addresses both the revision and repeal of GOPs. For clarity, the language in these sections would be revised so that §122.504(c) addresses rescission of a GOP and §122.504(d) addresses revisions. Consistent with the current requirement to submit an application by the effective date of the GOP, the commission proposes that a permit holder who no longer qualifies for a GOP as a result of revision or rescission must submit an application for another operating permit by the effective date of the rescission or revision. Language in §122.504(d) regarding the intent of the permit holder to operate under the GOP would be deleted because this section addresses procedures required as the result of changes to rules or GOPs and not decisions by the permit holder to change the way in which a site is operated.

Throughout §122.506, references to "proposed" in describing the draft general operating permit would be deleted because this term is used to describe a stage in the rulemaking process. The current §122.506 was written to account for the rulemaking process, which requires a hearing for the adoption of, or revision to, any GOP. However, if a GOP was issued by the executive director consistent with the public notice requirements for issuing site-specific permits in Chapter 122, Subchapter D, a hearing could be held if requested, but would not always be required. Therefore, revisions to §122.506(a) and a new §122.506(b) are proposed to include the public notice requirements for GOPs issued by the executive director and to allow a hearing to be requested consistent with the site-specific requirements. The proposed revision to §122.506(a) will also include the procedures for public notice for newly issued GOPs, significant revisions to GOPs, and rescissions of GOPs. The notice of a draft GOP will be published in the *Texas Register*, on the commission's publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. These newspapers were selected since they are commonly used by the commission to provide notice for rulemaking. Additional notice may be provided, as determined by the executive director, in a newspaper of



largest general circulation in the metropolitan area appropriate for the draft general operating permit. The commission believes that publication in the *Texas Register*, on the commission's publicly accessible electronic media, and newspaper notices will provide ample notice to the regulated community and general public concerning the issuance, revision, or rescission of GOPs. Amendments to §122.506(b) would require that a GOP and any associated notices be made accessible to local air pollution control agencies, consistent with Subchapter D.

Throughout §122.508, references to "proposed" in describing the draft general operating permit would be deleted, because this term is used to describe a stage in the rulemaking process. Section 122.508 would be amended to state that a hearing need not be held if it is not requested. Again, the proposed language is consistent with the notice and comment hearings requirements in Subchapter D.

The proposed new §122.509 would establish requirements for public announcement of minor permit revisions to GOPs. Consistent with the revision requirements in Subchapter C, minor permit revisions to GOPs will be subject to public notice requirements. The public announcement requirements in Subchapter D could not simply be referenced, because they include requirements that apply to specific permit applications, and the GOP public announcement requirements must be generic enough to account for all authorization granted under the GOP. Except for the application specific or site-specific requirements, all public announcement requirements in Subchapter D have been included in §122.509.

The proposed new §122.510 would keep GOPs issued under the APA in effect until they are repealed through rulemaking. This section would also state that an authorization to operate under a GOP adopted by the commission that is replaced with a GOP issued by the executive director will be automatically converted. In addition, the new section states that should the applicability determinations and the basis for the determinations affecting a site remain unchanged, the permit holder is not required to submit an application for the GOP issued by the executive director. This will allow permit holders to avoid having to submit applications containing no new information.

Another area addressed by this proposed rulemaking is the Chapter 122 full program application schedule for GOPs. Under the full program, an owner or operator should have submitted an abbreviated initial permit application by February 1, 1998, for any site subject to the full program regardless of permit application type. Once the abbreviated permit application has been submitted, the remaining permit application information submittal then becomes specific to permit application type and Standard Industrial Classification (SIC) major grouping. Currently, §122.130(b)(2) indicates that an owner or operator of a site subject to the full program and applying for a GOP should submit remaining permit application information by July 25, 1998, regardless of SIC major grouping. This requirement was written in the paragraph specifically for the §122.516 GOP developed for full program sites. The commission has determined, though, that owners or operators of some sites subject to the full program may be able to take advantage of a GOP developed for interim program sites. Owners or operators of these full program sites, however, have a deadline for submitting the remaining permit application information that is later than July 25, 1998. To allow the owners or operators of these full program sites to take advantage of a GOP and submit remaining permit application information at a date later than

July 25, 1998, the phrase "for any site for which the applicant is applying for a general operating permit and" is proposed to be deleted from §122.130(b)(2).

Additionally, this proposed rulemaking includes changes to §122.134(b)(5) and §122.201(f) to maintain consistency with the proposed changes to Subchapter F. In §122.134(b)(5), the term "rescinded" is proposed to replace "repealed" due to a proposed change in the §122.504 title. Furthermore, the current §122.201(f) notes that the adoption of a GOP is not required to meet the requirements of §122.201. Since the proposed Subchapter F changes will create GOPs issued by the executive director, the phrase "issuance of a general operating permit by the executive director" is proposed to replace the phrase "adoption of a general operating permit." The definition of Permit or Federal Operating Permit in §122.10 would be changed to refer to GOPs issued, renewed, or revised by the executive director. The definition of "General operating permit" would be revised to read that a GOP is one issued under Subchapter F.

The proposed rulemaking will provide new procedures for developing and maintaining future GOPs, but will not affect any current GOPs or any authorization to operate under them. It will also allow the owners or operators of certain sites subject to the full program to take advantage of the streamlined permitting mechanism offered by GOPs.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant economic costs for state or local government as a result of administration or enforcement of the sections. The commission does not expect any increase in costs for sites currently operating under Chapter 122.

#### PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be a more current set of applicable requirements in the general operating permits, which will result in a more effective compliance and enforcement tool. This is primarily an administrative action that proposes new procedures to be used by the executive director for the development of general operating permits. It does not add any new regulatory requirements to affected permit holders or potential permit holders, including those holders that may be small businesses.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking according to the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225. The proposal is administrative and addresses internal procedures of the commission. It does not add any new regulatory requirements to affected industries. It 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 and is not a major environmental rule as defined in the Code.

As an alternate Federal Operating Permit mechanism, 40 CFR §70.6(d) allows for the use of General Permits. This alternate permitting mechanism is also allowed in Chapter 122. Section 122.110 authorizes the executive director to take action on any permit on behalf of the commission. This proposal does not

exceed a standard set by federal law and is not specifically required by state law.

Texas Clean Air Act (TCAA), §382.051, authorizes the commission to issue permits, including permits for numerous similar sources. The use of General Permits is not specifically required by federal law and the proposed rules do not exceed an express requirement of state law.

This proposal does not exceed a requirement of delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program. No such agreement exists concerning the subject of this proposal.

This action is proposed under the specific statutory authority of TCAA, §382.051, which authorizes the commission to issue permits including permits for numerous similar sources. This action is not proposed under the general powers of the agency.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposed rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The proposed rulemaking will allow the executive director to issue general operating permits and remove the requirement for general operating permits to be adopted by the commission through rulemaking. Promulgation and enforcement of the proposed sections will not be a burden on private real property because they do not place additional requirements on those required to obtain a federal operating permit. The proposed rulemaking will not make existing regulations less stringent. This rulemaking proposal is also an exempt action under Texas Government Code, §2007.003(b), since the commission is fulfilling its requirement to implement a federally mandated program.

#### 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 goals and policies. The permits issued under Chapter 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP goals and policies during the public comment period.

#### PUBLIC HEARING

A public hearing on this proposal will be held September 28, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of

oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98011-122-AI. Comments must be received by 5:00 p.m., October 5, 1998. For further information or questions concerning this proposal, please contact Bruce McFarland of the Operating Permits Division, Office of Air Quality, (512) 239-1132.

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

#### Subchapter A. Definitions

##### 30 TAC §122.10

#### STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendment implements Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

##### §122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(7) General operating permit-A permit ~~by rule~~ issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple stationary sources may be authorized to operate.

(8)-(9) (No change.)

(10) Permit or federal operating permit-

(A) (No change.)

(B) any general operating permit, or group of general operating permits, issued, renewed, or revised by the executive director ~~adopted by the commission~~ under this chapter.

(11)-(22) (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 August 20, 1998.

TRD-9813242

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: November 18, 1998

For further information, please call: (512) 239-1966



## Subchapter B. Permit Requirements

### Division 3. Permit Application

#### 30 TAC §122.130, §122.134

##### STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendments implement Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

##### §122.130. *Initial Application Due Dates.*

- (a) (No change.)
- (b) Full operating permit program.
  - (1) (No change.)

(2) The remaining application information [~~for any site for which the applicant is applying for a general operating permit and~~] for sites with the following primary SIC major groups shall be submitted by July 25, 1998 (for purposes of this section, each site shall have only one primary SIC code):

(A)-(H) (No change.)

(3) (No change.)

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

##### §122.134. *Complete Application.*

(a) (No change.)

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

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

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application Revisions When a General Operating Permit is Revised or Rescinded [~~Repeated~~]).

(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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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## Subchapter C. Initial Permit Issuances, Revisions, Reopenings, and Renewals

### Division 1. Initial Permit Issuances

#### 30 TAC §122.201

##### STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendment implements Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

##### §122.201. *Initial Permit Issuance.*

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

(f) Neither the issuance [~~adoption~~] of a general operating permit by the executive director nor the granting of an authorization to operate under a general operating permit shall be required to meet the requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

(g) (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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Subchapter F. General Operating Permits

## Division 1. Procedural Requirements for General Operating Permits

### 30 TAC §§122.501, 122.503, 122.504, 122.506, 122.508-122.510

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendments and new sections implement Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

#### §122.501. General Operating Permits.

(a) ~~The executive director may issue~~ [The commission may adopt by rule] a general operating permit for numerous similar stationary sources provided the following:

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

(4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied; and

(5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied. [~~and~~]

~~[(6) the adoption process is consistent with the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.]~~

(b) General operating permits shall not be final until the requirements in [are subject to the requirements under] §122.360 of this title (relating to Public Petition) have been satisfied.

(c) (No change.)

(d) The executive director may revise or rescind any general operating permit issued by the executive director.

(1) The executive director may issue an administrative permit revision to a general operating permit provided the following:

(A) the change meets the criteria for an administrative permit revision in §122.211 of this title (relating to Administrative Permit Revisions); and

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter.

(2) The executive director may issue a minor permit revision provided the following:

(A) the change meets the criteria for a minor permit revision in §122.215 of this title (relating to Minor Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.509, 122.330, and 122.350 of this title (relating to Public Announcement for General Operating Permits; Affected State Review; and EPA Review) have been satisfied.

(3) The executive director may issue a significant permit revision provided the following:

(A) the change meets the criteria for a significant permit revision in §122.219 of this title (relating to Significant Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.506, 122.330, 122.508, and 122.350 of this title (relating to Public Notice for General Operating Permits; Affected State Review; Notice and Comment Hearings for General Operating Permits; and EPA Review) have been satisfied.

(4) A significant permit revision shall not be final until the requirements in §122.360 of this title have been satisfied.

~~[(d) The commission may amend or repeal any general operating permit under the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.]~~

(e) The executive director shall make a copy of the ~~[proposed]~~ draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements in subsection (a) of this section, at least every five years after the effective date.

#### §122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an updated application to the executive director for the following activities at a site:

(1) a change in [~~addition, or removal of~~] any applicability determination [determinations] or the basis of any determination [determinations] in the [original] general operating permit application; or

~~[(2) a correction of typographical errors; or]~~

(2) [(3)] a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) (No change.)

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director:

(1) the permit holder complies with the following:

(A) (No change.)

(B) all applicable requirements; ~~and~~

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the updated application [information required in subsection (b) of this section] before the change is operated;

(3) the permit holder maintains, with the authorization to operate under the general operating permit [~~the updated application [information required by subsection (b) of this section]~~] until the executive director grants a revised authorization to operate; and

(4) the permit holder operates under the representations in the updated application [~~required by this subsection~~].

(d) The permit holder need not comply with the representations in the [~~original~~] application that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

(e)-(f) (No change.)

(g) If the emission units addressed in the application [~~authorization to operate~~] no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h)-(i) (No change.)

§122.504. *Application Revisions When a General Operating Permit is Revised or Rescinded* [~~Repeated~~].

(a) If the applicability determinations or the bases for the determinations at a site change due to [This section applies if the permit holder's authority to operate under a general operating permit is affected by] the revision or repeal of an applicable requirement or state-only requirement or the revision or rescission of a general operating permit issued by the executive director, the following requirements apply [a rule].

(1) The permit holder shall [~~must~~] submit an updated application for the general operating permit containing at a minimum the following information:

(A) (No change.)

(B) any changes in the [~~]; additions, or removals of] applicability determinations;~~

(C)-(F) (No change.)

[(2) The application must be submitted by the effective date of the general operating permit.]

(2) [(3)] The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions).

(3) [(4)] If the updated application is required as the result of the revision or repeal of an applicable requirement or state-only requirement, the [The] permit holder shall do the following: [repeal the information required in paragraph (1)(A)-(E) of this subsection before the compliance date of the new requirement or effective date of the repealed requirement. The information in paragraph (1)(A)-(F) of this subsection shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.]

(A) record the information required in paragraph (1)(A)-(E) of this subsection before the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement;

(B) submit an updated application for the general operating permit no later than 45 days after the compliance date of the new applicable requirement or state-only requirement or effective

date of the repealed applicable requirement or state-only requirement; and

(C) [(5)] [~~The permit holder shall] maintain the information required in paragraph (1)(A)-(E) of this subsection with the authorization to operate until a new authorization is granted.~~

(4) If the updated application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the updated application no later than 45 days after the issuance of the general operating permit; and

(B) maintain the updated application with the authorization to operate until the general operating permit is revised.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the application [~~authorization to operate~~] qualify for the revised general operating permit;

(2) (No change.)

(3) the basis for each applicability determination remain unchanged.

(c) If a general operating permit is rescinded [~~repealed~~] and not replaced, the authorization to operate under the general operating permit is revoked. The permit holder must apply for another operating permit no later than the date the general operating permit is rescinded.

(d) If as a result of [a permit holder's authority to operate under a general operating permit is affected by] the revision [or repeal] of a general operating permit [and] the permit holder no longer qualifies for the general operating permit [or no longer intends to operate under the general operating permit], the permit holder must apply for another operating permit no later than the date of issuance [by the effective date of the revision or repeal] of the revised general operating permit.

(e) Those representations in the application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) (No change.)

(g) The permit holder need not comply with the representations in the [~~original~~] application or the [~~original~~] terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

§122.506. *Public Notice for General Operating Permits.*

(a) Before the issuance [~~adoption~~] of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the [~~proposed~~] draft general operating permit [~~rule~~] consistent with the requirements of this section. The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission's publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan area appropriate for the draft general operating permit. The [In addition to the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002, the] notice shall contain the following information:

(1) a description of the activities involved in the ~~proposed~~ draft general operating permit ~~rule~~;

(2) the location and availability of copies of the ~~proposed~~ draft general operating permit ~~rule~~;

(3) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;

(4) the notification that a person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the general operating permit is entitled to request a notice and comment hearing; and

~~(4) the time, place, and nature of the hearing that will be held regarding the proposed draft general operating permit rule;~~

~~(5) a brief description of the purpose of the hearing that will be held regarding the proposed draft general operating permit rule; and~~

(5) ~~(6)~~ the name, address, and phone number of the commission office to be contacted for further information.

(b) During the 30-day public notice comment period, any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request in writing a notice and comment hearing on a draft general operating permit.

(c) ~~(b)~~ The executive director shall make a copy of the ~~renewal application;~~ general operating permit ~~;~~ and any required notices accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit .

(d) ~~(c)~~ The executive director shall make the ~~proposed~~ draft general operating permit ~~rule~~ available for public inspection throughout the comment period during business hours at the commission's central office.

(e) ~~(d)~~ The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the ~~proposed~~ draft general operating permit ~~rule~~.

(f) ~~(e)~~ The ~~proposed~~ draft general operating permit ~~rule~~ may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(g) ~~(f)~~ The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) ~~and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002~~.

(h) ~~(g)~~ The executive director shall provide 30 days' advance notice of the hearing.

§122.508. *Notice and Comment Hearings for General Operating Permits.*

~~(a) Before the adoption of any general operating permit, the executive director shall hold a notice and comment hearing regarding the proposed draft general operating permit rule.~~

(a) ~~(b)~~ All hearings regarding general operating permits shall be conducted under the procedures in this section ~~according to the APA~~.

(b) Any person who may be affected by emissions from emission units that may be authorized to operate under the general

operating permit may request that the executive director hold a hearing on a draft general operating permit.

(c) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit, and that request is reasonable, the executive director shall hold a hearing.

(d) The executive director shall publish notice of a hearing on a draft general operating permit. The notice must be published at least 30 days before the date set for the hearing. The notice must include, at a minimum, the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(e) At the executive director's discretion, the hearing notice may be combined with the notice of the opportunity for public comment required by this subchapter.

(f) ~~(e)~~ Any person may submit oral or written statements and data concerning the ~~proposed~~ draft general operating permit ~~rule~~.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of the hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(g) ~~(d)~~ A tape recording or written transcript of the hearing shall be made available to the public.

(h) ~~(e)~~ Any person who believes that any condition of the ~~proposed~~ draft general operating permit ~~rule~~ is inappropriate or that the preliminary decision to issue ~~adopt~~ the general operating permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) ~~(f)~~ Any supporting materials for comments submitted under subsection (f) ~~(e)~~ of this section shall be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(j) ~~(g)~~ The executive director shall keep a record of all comments and also of the issues raised in the hearing. This record shall be available to the public.

(k) ~~(h)~~ The ~~proposed~~ draft general operating permit rule may be changed based on comments pertaining to whether

the [proposed] draft general operating permit [rule] provides for compliance with the requirements of this chapter.

(l) [(4)] The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) [and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002].

§122.509. Public Announcement for General Operating Permits.

(a) The public announcement requirements in this section apply to minor permit revisions to general operating permits.

(b) The executive director shall publish an announcement of a draft general operating permit for a minor permit revision to a general operating permit on the commission's publicly accessible electronic media. The announcement shall contain the following:

(1) the location and availability of the following:

(A) the draft general operating permit;

(B) all other relevant supporting materials in the public files of the commission;

(2) a description of the comment procedures, including the duration of the public announcement comment period; and

(3) name, address, and phone number of the commission office to be contacted for further information.

(c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall furnish a notice of the public announcement to any air pollution control agency of any affected state.

(e) The executive director shall make the draft general operating permit available for public inspection throughout the comment period during business hours at the commission's central office (and at the commission's regional office where the site is located).

(f) The executive director shall receive public comment for 30 days after the announcement of the draft general operating permit is published. During the comment period, any person may submit written comments on the draft general operating permit.

(g) The draft general operating permit may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(h) Public notice requirements for general operating permits satisfy public announcement requirements.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

§122.510. General Operating Permits Adopted by the Commission.

(a) Any general operating permit in this subchapter adopted by the commission shall remain in effect until it is repealed under the APA.

(b) Any authorization to operate under a general operating permit in this subchapter adopted by the commission that is replaced with a general operating permit issued by the executive director shall be automatically converted to an authorization to operate under the general operating permit issued by the executive director. Provided the applicability determinations and the bases for the determinations

affecting a site remain unchanged, the permit holder is not required to submit an application for the general operating permit issued by the executive director.

This 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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Chapter 330. Municipal Solid Waste

### Subchapter P. Fees and Reporting

#### 30 TAC §§330.601-330.603

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§330.601, 330.602, and 330.603, concerning fees and reports.

**EXPLANATION OF PROPOSED RULE.** The purpose of the amendments is to delete §330.602(a)(8), which references §330.804. Section 330.804, which related to a reduction in solid waste disposal fees for landfills that beneficially use tire shreds, expired on December 31, 1996, and has been repealed. Section 330.602(a)(8) also expired on December 31, 1996, but remained in the commission's rules. The amendments also clarify the method of reporting the amount of waste received at a solid waste disposal facility by defining "waste received for disposal" to ensure that the correct amount of fees is paid by all facility operators. No new requirements are proposed.

Section 330.601 relates to the purpose and applicability of Subchapter P, which pertains to fees and reports. Section 330.601(b)(1), relating to the applicability of fees, is proposed to be amended by including a definition of the term "waste received for disposal" to clarify what wastes are subject to the payment of fees. "Waste received for disposal" means the total amount of the waste received by a disposal facility at the gate, excluding those wastes which are recycled or for which the commission may not charge a fee under Health and Safety Code, §361.013. The fee generated under §361.013 is based on the amount of weight or volume of the waste received at the gate of the facility. Materials that are recycled or for which the commission may not charge a fee under Health and Safety Code, §361.013, will not be considered in the calculation of the municipal solid waste disposal fee. The executive director will modify the quarterly municipal solid waste fee report form to include those wastes listed in Texas Health and Safety Code, §361.013 for which the commission may not charge a fee.

Section 330.602 relates to municipal solid waste disposal fees. A proposed change to §330.602(a), relating to landfilling, deletes the last sentence in the opening paragraph, which recommends that waste amounts be reported in short tons but that reporting in cubic yards is acceptable. The deletion will eliminate a conflict with §330.603(a)(2), relating to reporting

units, which specifically directs that the amount of waste received shall be reported in short tons or in cubic yards.

A proposed change to §330.602(a)(2), relating to measurement options for landfilling, adds a sentence to emphasize that the volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight on which tipping fees were charged, or would have been charged in the ordinary course of business, at the receipt of the waste at the gate. The phrase "or would have been charged in the ordinary course of business" is included to indicate that the fees are due for all waste received whether or not the facility charges for it, except for those wastes that are specifically exempt under the subchapter or by law.

Section 330.602(a)(2)(A)-(C) has been deleted and replaced by proposed §330.602(a)(2)(A)(i)-(iii). The new provision clarifies that the recommended method for measuring and reporting waste received at the gate is in short tons and reflects the rates used by the commission to calculate the fee on waste reported in short tons, compacted waste reported in cubic yards, or uncompacted waste reported in cubic yards.

A proposed change to §330.602(a)(2)(D) renames it as §330.602(a)(2)(B).

A proposed change to §330.602(a)(3), relating to calculation of fees by the commission from information in the quarterly waste summary report, adds that the information "shall be derived from weight tickets, invoices or any other information deemed relevant by the executive director" to provide guidance on what information will be used for compilation of the quarterly report.

The proposed deletion of §330.602(a)(8), relating to the reduction of fees for the use of tire shreds in landfills, will remove a provision which expired on December 31, 1996. However, tire shreds may continue to be used for beneficial landfill purposes.

A proposed change to §330.602(b), relating to incinerators and processes for disposal, deletes the last sentence in the opening paragraph, which recommends that waste amounts be reported in short tons but that reporting in cubic yards is acceptable. The deletion will eliminate a conflict with §330.603(a)(2), relating to reporting units, which specifically directs that the amount of waste received shall be reported in short tons or in cubic yards.

A proposed change to §330.602(b)(2), relating to measurement options for incinerators and processes for disposal, adds a sentence to emphasize that the volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight on which tipping fees were charged, or would have been charged in the ordinary course of business, at the receipt of the waste at the gate. The phrase "or would have been charged in the ordinary course of business" is included to indicate that the fees are due for all waste received whether or not the facility charges for it, except for those wastes that are specifically exempt under the subchapter or by law.

Section 330.602(b)(2)(A)-(C) has been deleted and replaced by proposed §330.602(b)(2)(A)(i)-(iii). The new provision clarifies that the recommended method for measuring and reporting waste received at the gate is in short tons and reflects the rates used by the commission to calculate the fee on waste reported in short tons, compacted waste reported in cubic yards, or uncompacted waste reported in cubic yards.

Proposed changes to §330.602(b)(2)(D) rename it as §330.602(b)(2)(B) and correct an error by substituting "facility"

for "landfill" since the subsection pertains to non-landfill facilities.

A proposed change to §330.602(b)(3), relating to calculation of fees by the commission from information in the quarterly waste summary report, adds that the information "shall be derived from weight tickets, invoices or any other information deemed relevant by the executive director" to provide guidance on what information will be used for compilation of the quarterly report.

Section 330.603 relates to municipal solid waste reports. Proposed changes to §330.603(a)(2), relating to reporting units, add "as received (compacted or uncompacted) at the facility" to clarify that the volume to be reported will be as received at the facility, compacted or uncompacted, and substitute "utilized" for "available" with regard to the use of scales for weighing waste received to avoid the questions of what is considered available or not available.

Proposed changes to §330.603(a)(6) and §330.603(b)(5), relating to method of submission of reports, delete the phrase "and delivered and mailed" because it was already stated in the same sentence.

**FISCAL NOTE.** Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there are no significant fiscal implications anticipated for state or local governments as a result of administration or enforcement of the section. Clarification of the methods of reporting of solid waste disposal activity may result in some changes in revenue from disposal fees which are based on the reports; however, any potential effects on revenues are not anticipated to be significant and will have no effect on amounts of revenue appropriated or budgeted by the commission. The effect on local governments will be similar to those effects on any person operating a municipal solid waste facility subject to these rules. Local governments that modify current reporting practices in order to be consistent with the proposed rules may realize some effect on the amounts of waste reported and the fees assessed. Any changes in the amounts of waste reported will have an impact equivalent to \$1.25 per ton. These potential fiscal implications for any one facility operated by a local government are not anticipated to be significant.

**PUBLIC BENEFIT.** Mr. Minick has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the amended sections will be increased consistency of commission regulations with statutory authority and the assurance that all municipal solid waste disposal facility operators, and consequently the waste generators, are paying an equitable share of disposal fees for the support of state solid waste management programs. There are no other economic costs to any person, including any small business, required to comply with these sections as proposed.

**ECONOMIC ANALYSIS FOR SMALL BUSINESSES.** The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002 requirements, and has determined that there is no economic effect on small businesses because the proposed rulemaking only provides clarification of existing rules. The only small businesses that may be affected by the proposed rule amendments are any operators of municipal solid waste disposal or processing facilities who may be underreporting or overreporting the amount of waste received for disposal and thus underpaying or overpaying the disposal



fees owed to the state. The proposal does not impose any new requirements.

**DRAFT REGULATORY IMPACT ANALYSIS.** The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposal is not directly related to and does not result in any decrease in the protection of the environment or human health; rather, it only clarifies a requirement of state law. The proposal clarifies the process for the calculation of municipal solid waste fees as authorized by Texas Health and Safety Code, §361.013. The proposal is not the result of any federal law or mandate and is not the result of any delegation agreement or contract with an agency of the federal government. The purpose of the amendments is to delete §330.602(a)(8), which references §330.804. Section 330.804, which related to a reduction in solid waste disposal fees for landfills that beneficially use tire shreds, expired on December 31, 1996. The amendments would also clarify the method of reporting the amount of waste received at a solid waste disposal facility to ensure that the correct amount of fees is paid by all facility operators.

**TAKINGS IMPACT ASSESSMENT.** The commission has prepared a Takings Impact Assessment for these rule amendments pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the amendments is to repeal an expired provision pertaining to the reduction of fees for the use of tire shreds for engineering purposes in landfill construction and to clarify the method of reporting the amount of waste received at a solid waste disposal facility to ensure that the correct amount of fees is paid by all facility operators. The rule amendments will substantially advance the specific purpose by deleting the expired provision and explicitly explaining that the calculation of the amount of waste received for disposal fee purposes must be consistent with the weight or volume of waste used as a basis for charging the tipping fee upon receipt of the waste at the facility. Promulgation and enforcement of these rule amendments will not affect or create a burden on private real property because the amendments only provide clarification to municipal solid waste facility operators on how to properly calculate and report the amounts of waste received for disposal.

**COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW.** The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule amendments are not subject to the CMP.

**SUBMITTAL OF COMMENTS.** Written comments regarding this proposal may be mailed to Bettie Bell, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97185-330-WS. Comments must be received by 5:00 p.m., October 5, 1998. For further information concerning this proposal, please contact Hector

Mendieta, Waste Policy and Regulations Division, (512) 239-6694.

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Water Code §5.103 which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas; and the Solid Waste Disposal Act (Act), Texas Health and Safety Code, §361.024, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Act, and §361.013(a) which establishes the rates and basis for solid waste disposal fees to be charged.

The proposed amendments implement Health and Safety Code, Chapter 361.

§330.601. *Purpose and Applicability.*

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

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the commission based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste received by a disposal facility at the gate, excluding only those wastes which are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations which has been separated and has not been commingled with any other waste material at the point of generation. The commission will credit any fee payment due under this subchapter for any material received and converted to compost product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill or used as landfill daily cover is not exempt from the fee.

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

§330.602. *Fees.*

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the commission for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used. [It is recommended that waste amounts be measured and reported in short tons (2,000 pounds); however, reporting by cubic yards is acceptable.]

- (1) (No change.)

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight on which tipping fees were charged, or would

have been charged in the ordinary course of business, at the receipt of the waste at the gate.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator must accurately measure and report the number of cubic yards or tons of waste received at the gate.

(i) The fee for waste reported in short tons will be calculated by the commission at an amount equal to \$1.25 per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.40 per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.25 per cubic yard.

~~[(A) The recommended method for measuring and reporting waste received for disposal is in short tons. The fee for waste reported in short tons will be calculated by the commission at an amount equal to \$1.25 per ton.]~~

~~[(B) If scales are not available for landfill use to determine the weight of compacted waste received, the facility operator must accurately measure and report the number of cubic yards of such waste received for disposal. The fee for compacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.40 per cubic yard.]~~

~~[(C) If scales are not available for landfill use to determine the weight of uncompacted waste received, the facility operator must accurately measure and report the number of cubic yards of such waste received for disposal. The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.25 per cubic yard.]~~

~~(B) [(D)] If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.603(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the commission at an amount equal to \$1.25 per ton.~~

(3) Fee calculation. The fee shall be calculated by the commission using information obtained from the quarterly solid waste summary report, which shall be derived from weight tickets, invoices or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the commission and forwarded to the applicable permittee/registrant or a designated representative.

(4) - (7) (No change.)

~~[(8) Fee Reduction. The fee may be reduced in accordance with §330.804 of this title (relating to The Use of Tire Shreds in Landfills) through December 31, 1996, upon which date this paragraph will expire.]~~

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes municipal solid waste for disposal by means other than landfilling is required to pay a fee to the commission for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named. ~~[It is recommended that waste amounts be measured~~

~~and reported in short tons (2,000 pounds); however, reporting by cubic yards is acceptable.]~~

(1) (No change.)

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight on which tipping fees were charged, or would have been charged in the ordinary course of business, at the receipt of the waste at the gate.

~~(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.~~

~~(i) The fee for waste reported in short tons will be calculated by the commission at an amount equal to \$0.62 and one half cent per ton.~~

~~(ii) The fee for compacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.20 per cubic yard.~~

~~(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.12 and one half cent per cubic yard.~~

~~[(A) The recommended method for measuring and reporting waste received for disposal is in short tons. The fee for compacted waste reported in short tons will be calculated by the commission at an amount equal to \$0.62 and one half cent per ton.]~~

~~[(B) If scales are not available for facility use to determine the weight of compacted waste received, the operator must accurately measure and report the number of cubic yards of such waste received. The fee for compacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.20 per cubic yard.]~~

~~[(C) If scales are not available for facility use to determine the weight of uncompacted waste received, the facility operator must accurately measure and report the number of cubic yards of such waste received. The fee for uncompacted waste reported in cubic yards will be calculated by the commission at an amount equal to \$0.12 and one half cent per cubic yard.]~~

~~(B) [(D)] If a facility [landfill] operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.603(a)(3) of this title (relating to Reports), the fee shall be calculated by the commission at an amount equal to \$0.62 and one half cent per ton.~~

(3) Fee calculation. The solid waste fee shall be calculated by the commission using information obtained from the quarterly solid waste summary report, which shall be derived from weight tickets, invoices or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the commission and forwarded to the applicable permittee/registrant or a designated representative.

(4) - (7) (No change.)

(c) (No change.)

§330.603. *Reports.*

(a) Disposal facilities and processes.

(1) (No change.)

(2) Reporting units. The amount of waste received for processing or disposal shall be reported in short tons (2,000 pounds)

or in cubic yards as received (compacted or uncompacted) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized [available] and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subparagraphs (A) and (B) of this paragraph.

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

(3) - (5) (No change.)

(6) Method of submission. The required report shall be delivered or mailed to the Texas Natural Resource Conservation Commission [and delivered or mailed] to the return address designated by the commission in the billing statement distributed quarterly.

(7) (No change.)

(b) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.602(c) of this title (relating to Fees)) are subject to reporting requirements but are not required to pay a fee.

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

(5) Method of submission. The required report shall be delivered or mailed to the Texas Natural Resource Conservation Commission [and delivered or mailed] to the return address designated by the commission in the billing statement distributed quarterly.

(6) (No change.)

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

Filed with the Office of the Secretary of State, on August 24, 1998.

TRD-9813426

Margaret Hoffman

Director, Environmental Law

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: October 4, 1998

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



## TITLE 34. PUBLIC FINANCE

### Part III. Teacher Retirement System of Texas

#### Chapter 41. Insurance

##### 34 TAC §41.13

The Teacher Retirement System of Texas (TRS) proposes an amendment to §41.13 concerning participation in the Texas Public School Employees Group Insurance Program by public school districts. The rule amendment as proposed was adopted on an emergency basis and published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8319). The proposed amendment deletes language that prohibits a school district that did not elect to participate in TRS-Care on September 1, 1997, to begin participation in TRS-Care until September 1, 1999 or later. This subsection of the rule was intended to promote

administrative efficiency by requiring districts to make elections to participate during certain times. This subsection of the rule will be meaningless after September 1, 1998 as coverage may begin only on September 1 of a school year and only one school district applied for coverage in a timely manner. That one school district was allowed to enroll based on the emergency adoption of the rule amendment.

Ronnie Jung, Chief Financial Officer, has determined that for each year of the first five years the section as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Ronnie Jung, Chief Financial Officer, has determined that the public benefit will be the deletion of an outdated and unnecessary part of a rule and that there will be no anticipated economic cost to the public, small businesses, or to persons who are required to comply with the section as proposed for each year of the first five years the proposal will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701, (512) 397-6400.

The amendment is proposed under the Government Code, Chapter 825, §825.102, which authorizes the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. In addition, §§5 and 7A of Article 3.50-4 of the Insurance Code specifically authorize the Board of Trustees to adopt rules needed to implement the insurance program and to determine the eligibility requirements for participation by a school district.

The Insurance Code, Article 3.50-4 is affected by this proposed amendment.

§41.13. *Participation in the Texas Public School Employees Group Insurance Program by Public School Districts.*

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

~~[(d) Nonparticipation by a school district. An eligible school district which has elected not to participate in the program for the plan year starting on September 1, 1997, will be ineligible to participate in the program until September 1, 1999.]~~

This 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 August 21, 1998.

TRD-9813402

Charles Dunlap

Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: October 23, 1998

For further information, please call: (512) 391-2115



## Part XI. Fire Fighters' Pension Commission

### Chapter 301. Rules of the Texas Statewide Emergency Services Retirement Fund

#### 34 TAC §301.1, §301.2

The Office of the Fire Fighters' Pension Commissioner (the office) proposes amendments to §301.1, concerning definitions, and §301.2, concerning scope, of the rules and regulations of the Texas Statewide Emergency Services Retirement Fund. Section 301.1(4)(A) is being amended to clarify the definition of an emergency. Section 301.1(4)(B) is being amended to clarify that beginning January 1, 1998, the number of drills per year was changed to the number of drill hours per year, to delete unnecessary references to statute and to remove inapplicable language. Section 301.1(4)(F) is being amended to clarify that a member must attend only 40% of the number of drills required by law and to provide that members cannot be excused from attending less than the minimum number of drills required by Texas Civil Statutes, Article 6243e.3. Section 301.1(4)(I) is being amended to clarify that in decisions by the local boards regarding what constitutes an emergency and excused absences from emergencies, a member cannot be excused from attending less than the minimum number of emergencies required by Article 6243e.3. The definition of leave of absence in §301.1(5) is being amended to clarify that during leave of absence caused by military duty, no dues are required to be paid, and for leave of absence caused by temporary disability, dues must be paid. The definition of military duty in §301.1(6) is being amended to apply to members called to active military duty for 30 or more days. This amendment is proposed to clarify that the military duty must be active and must exceed 29 days. The amendment deletes the requirement that the military duty be during a war or national emergency. The proposed definition of military duty is more descriptive of the type military duty to which a participating member may be called in the post-Cold War era.

Section 301.2(j)(3), concerning the applicability of the Fair Labor Standards Act to the Statewide Emergency Services Retirement Fund, is being amended to delete narrative explaining the background history of the applicability of the Fair Labor Standards Act. The proposed rule simply provides that participation in the Senate Bill 411 system (the Statewide Emergency Services Retirement Fund) is affected by the Fair Labor Standards Act, and its attendant regulations, and that questions concerning the applicability of the Fair Labor Standards Act should be directed to a participating department's attorney. The purpose of the proposed amendment is to remove the office from the position of being called on for legal advice concerning federal law by departments participating in the Statewide Emergency Services Retirement Fund.

Morris E. Sandefer, Commissioner, has determined that for the first five-year period the proposed rules are in effect there will be no fiscal implications to state or local government as a result of administering the rules.

Mr. Sandefer also has determined that for each year of the first five years the proposed rules are in effect, the public benefit is that the amended definitions can be more easily understood by members and participating departments in the Statewide Emergency Services Retirement Fund. Additionally, the proposed amendment to the definition of military leave may provide coverage to a greater number of members than are covered by the current definition of military leave. The public may also benefit from the clarification that participating departments having questions relating to the effect of the Fair Labor Standards Act on the Statewide Emergency Services Retirement Fund should direct those questions to the department's counsel for advice.

No adverse economic impact is anticipated on small businesses as a result of the proposed rules.

Written comments on the proposed rules may be submitted to Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711, fax number 512/936-3480. Written comments must be received within 30 days of the date of publication of the proposed rules in the *Texas Register*.

The rules are proposed under Texas Civil Statutes, Article 6243e.3, §21(b), which requires the Board of Trustees of the office to establish rules for the administration of the Statewide Emergency Services Retirement Fund.

The statute affected by the proposed rules is Texas Civil Statutes, Article 6243e.3.

#### §301.1. Definitions.

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

(1) Active—Refers to a member so determined by the local board based on regular availability until terminated. A member emergency services department must pay dues on individual members even if they do not attend enough emergencies, fires and drills to earn time toward retirement, because the fund is responsible for his/her death and/or disability benefits even if he/she only attends one emergency or drill a year. This obligation is terminated when the department notifies the agency of the member's termination from the pension system.

#### (2) Dependent—

(A) Effective September 1, 1991, an unmarried child, natural or adopted, who is less than 18 years of age; is less than 19 years of age and a full-time student at an elementary or secondary school; or became disabled before the child's 22nd birthday and remains disabled.

(B) Until September 1, 1991, a dependent was defined by the U.S. Internal Revenue Code, Subtitle A, Chapter 1B Part V, Section 152, and any subsequent amendments. Any dependents who were eligible to receive benefits prior to September 1, 1991, are defined by the U.S. Internal Revenue Code. See § 301.3(e)(11)(B) of this title (relating to Determination of Costs and/or Benefits) for required forms.

(3) Disabled—Refers to a member decided disabled by the local board. The causative disability may include mental impairment. Such disability shall be deemed ceased:

(A) Upon a doctor's determination that the member can perform his/her duties as an emergency service member or the duties of any other occupation for which the person is reasonably suited by education, training, and experience. Both criteria must be met to claim a disability.

(B) In the case of a student, upon the student's return to classes.

(C) Effective September 1, 1989, there was no longer an off-duty disability. Off-duty disabilities incurred before that date were still eligible for those benefits.

#### (4) Emergencies and Drills—

(A) Emergency—An emergency as determined by the local board [to] should be included on the Annual Report. The local board may substitute the duties performed by the member for actual emergencies.

(B) ~~[Number of drills per year will be changed to number of drill hours per year effective]~~Effective January 1, 1998, [§ 21(b), Duties of the State Board of Trustees, in the pension fund law book. The department's calendar year 1997 annual report will use 24 drills per year. ]the number of drills per year was changed to the number of drill hours per year.

(C) A member who misses a drill(s) or drill hours while in recognizable certified training or education, may count that training or education for that week's drill if the local board approves.

(D) If a department does not hold at least 24 drills 48 hours (effective January 1, 1998) in a calendar year, no member will receive credit toward retirement for the year.

(E) Until January 1, 1981, a member had to make 60% of the drills.

(F) A department may hold more drills (or drill hours) than required by law, but a member only has to make 40% of the number required[-] by law. All members of the department must attend drills. Members cannot be excused from attending less than the minimum number of drills required by Article 6243 e.3, Section 1(1), Qualified Service.

(G) A department must schedule drills and drill hours (effective January 1, 1998) so that members entering or leaving the department during the calendar year have the ability to attend the required percentage during the calendar year.

(H) Emergencies must be prorated for members entering and leaving the department during the calendar year.

(I) All decisions by the local board regarding what constitutes an emergency, excused absences from emergencies, and all other pension matters should be documented in the local board's meeting minutes and kept on file by the local board. Members cannot be excused from attending less than the minimum number of emergencies required by Article 6243e.3, Section 1(1), Qualified Service.

(5) Leave of absence—There is no leave of absence under Senate Bill 411. A member is either active and dues are being paid; or the member is terminated and no dues are paid. The suggested procedure is to terminate the member if the absence is for an extended period of time and reinstate when the member returns to the pension system. The exception is absence caused by military duty which does not affect qualified service[-]and during which no dues are being paid, and absence caused by temporary disability, during which dues must be paid.

(6) Military Duty—Called for ~~active~~military duty [~~during a war or national emergency~~]for 30 days or more. The member is given credit for emergencies and drills and the governing body does not have to pay dues during that time. If the member is killed during the time he/she is called up, the system pays the lump sum off-duty death benefits to any beneficiary and a monthly pension to the spouse if applicable.

(7) Monetary remuneration—Refers to payment to the member by coin, currency, check or money order, not including the furnishing of water, and not including compensation for expenses incurred for the purpose of attending drills and fires.

(8) On-duty death—Refers to a death incurred in the course of the performance of duties as a member.

(9) On-duty disability—Refers to a disability incurred in the course of the performance of duties as a member.

(10) Physical Fitness—Effective September 1, 1991, §8, Certification of Physical Fitness, of the pension fund law, Texas Statewide Volunteer Fire Fighters' Retirement Act, was amended so that those members of the department not physically fit to participate in emergency services could remain in the system and earn credit toward retirement. The local board decides on the type of physical it feels meets the department's needs.

(A) The physician's certification of physical fitness remains in department files unless requested by the commissioner.

(B) The local board must notify the agency if a member cannot participate in emergency services.

(C) A member who cannot participate in emergency services should be assigned to support duties to earn credit on the Annual Report.

(D) The state board recommends updating physicals at least every five years.

(E) Effective September 1, 1997, § 2A, Membership, paragraphs (b)(4) and (c) in the pension fund law book added that a person is not a member of the pension system if the person does not receive a certification of physical fitness or assignment to support duties under § 8, Certification of Physical Fitness, of the pension fund law, Texas Statewide Volunteer Fire Fighters' Retirement Act. This does not mean that the local board of trustees may ignore §8, Certification of Physical Fitness, of the pension fund law, Texas Statewide Volunteer Fire Fighters' Retirement Act and maintain a department of emergency services personnel who do not have physicals and are not in the pension system. Any person over the age of 18 who is not retired from the pension system, and who does not receive a certification of physical fitness or assignment to support duties, must be terminated from the department.

(11) Temporary disability—

(A) A disability which, in the opinion of a physician, may be subject to improvement although in the interim rendering the member unable to perform his/her duties as a member or the duties of any other occupation for which the person is reasonably suited by education, training, and experience.

(B) If the doctor's statement says that a disability is permanent or will last more than three months, the member does not have to submit a new statement every three months. It is the responsibility of the local board to keep this office informed of the status of the disability. The governing body will continue to pay dues on a member on temporary disability. No dues are paid for a member on permanent disability since that person is considered to be on a disability-retirement.

§301.2. Scope.

(a) Applicability. Until September 1, 1997, the retirement fund (Senate Bill 411) applied to any political subdivision that contains an entire rural fire prevention district. It also applied when an entire rural fire prevention district was contained within more than one governing body, in which case the public agencies made equal contributions. The public agency could be a town.

(1) If a rural fire prevention district was located within a county, the county was the political subdivision. If no rural fire prevention district was located within a particular county, the statute was not applicable to that county.

(2) A school district constituted a political subdivision.

(3) If an unincorporated town was located in a county which had no rural fire prevention district, there was no political

subdivision to contribute to the fund and the statute was not applicable.

(4) Where a water district was located within the unincorporated town, the water district could constitute the political subdivision, if a rural fire prevention district was located wholly within it.

(5) If both county and water district met the definition, then both could be required to contribute.

(6) If the rural fire prevention district was situated within the town, the district was a political subdivision required to contribute.

(b) Effective September 1, 1997, the definition of governing body was any political subdivision of the state. If the participating department is situated in more than one political subdivision, the governing bodies of such political subdivisions shall contribute equally toward a total of at least \$12 for each member for each month of service.

(c) Governing Body/Emergency Services Districts.

(1) An emergency services district which is composed of members of a department which has been in Texas Local Fire Fighters' Retirement Act (TLFFRA House Bill 258) must inform the commission of this at the time they request entrance in Senate Bill 411. Being an emergency services district does not negate the legal obligations which have arisen as a result of being a member of TLFFRA.

(2) By law if a department is more than one political subdivision each shall contribute equally toward the cost for each member's service. It is the responsibility of the department and the governing bodies to inform the commissioner if this section of the law applies.

(3) An emergency services district which is composed of the members of a city emergency services department which has been in TLFFRA cannot be forced to assume the liability of the TLFFRA payees. If the district refuses to accept the payment of this liability the district cannot be in Senate Bill 411.

(4) A department which enters the system with the city as governing body and subsequently becomes governed by an emergency services district will, for pension purposes, continue with the city as governing entity until such time as the district enters into a contract with the pension system. The district and the city may contribute equally toward the total if applicable.

(d) Exemption.

(1) This retirement fund need not apply to a public agency whose governing body exempted itself from its operation within 60 days of August 28, 1977. The requirement to provide for participation in the fund pertains to all other public agencies whose governing bodies did not choose to exempt themselves prior to October 28, 1977.

(2) If a governing body acts to rescind its order exempting itself from the Texas Statewide Volunteer Fire Fighter's Retirement Act (the Act), its action will amount to a repeal; and the governing body will begin making its contributions at the time the recession becomes effective.

(3) If the public agency's governing body did not exempt itself, the emergency services department will be admitted to the pension system after they vote to enter the system as required by § 10, Entering The Pension System; Required Election. The department's

entrance date cannot pre-date the election. The governing body will be held liable for funding as though they rescinded the exemption.

(e) Effective September 1, 1997, a department which is participating in Senate Bill 411 at that date has 60 days to exempt itself from providing additional coverage to other volunteer or auxiliary emergency service personnel who were not eligible for coverage under the original provisions of the Act.

(1) This exemption must be exercised within 60 days after the general effective date of this Act.

(2) Governing bodies who elect to cover these members will provide proof of service as required by the Fire Fighter's Pension Commission.

(3) Governing bodies must pay for the emergency services personnel's contributions (dues) at this time, but in this instance only it will be straight cost without the actuarial factor (interest) added in.

(4) The governing body will pay the cost in one lump sum payment. If this cost cannot be paid in full in one lump sum payment at the time of contracting for coverage, any unpaid costs may be paid in full within three years or may be made in a manner to which the commissioner agrees.

(5) This service will be considered future service if it occurred after the department's entrance date in the system.

(f) Eligibility of a Public Agency. A department, to enter into this retirement fund, must have ten active members. A subsequent drop of the number of active members will not affect eligibility.

(g) Member Departments Which Cease to Exist. The commissioner shall continue to administer benefits of the pension system for members and retirees who performed service for a former member fire department that has not withdrawn from the pension system under § 12, Withdrawing from the Pension System, of this act but has ceased to exist. The governing body will perform the duties of the local board. (Became part of the pension fund law September 1, 1993, § 12(a), Withdrawing from the Pension System.)

(h) Merger. The decision to merge into the Senate Bill 411 plan may be made by a vote of the qualified members who participated in the emergency services department for at least one year. Each qualified member is entitled to cast one vote for each full year of participation. The governing body of the merging public agency is to provide verification of service with the Fire Fighters' Pension Commission as required by the commission. If no record of prior service exists with the Fire Fighters' Pension Commission, the local board is to verify service for each prospective member. This verification is to be signed by the chief or head of the department and the representatives of the local board, notarized and returned to the commission office.

(i) Non-TLFFRA Departments. Entities which have not been in any pension system prior to entering Senate Bill 411 follow the same procedures as entities in the Texas Local Fire Fighters' Retirement Fund (TLFFRA, formerly House Bill 258) on voting to enter this pension system and follow the same rules and regulations as departments merging into this system from TLFFRA.

(j) Individual Eligibility.

(1) Status. Qualified members of a department, whether involved in prevention, suppression, investigation, maintenance, or clerical work are eligible to participate in the retirement fund provided, however, that the member's eligibility to join is dependent

on the status of the public agency under whose control he/she is. The prospective member cannot override the public agency's status simply by the payment of contributions. The following are specifically barred as members of the pension system:

(A) If the person is less than 18 years of age.

(B) If the person is retired under this Act (after September 1, 1989), whether or not the person continues to participate in emergency related functions for the department from which the member retired. (For the exception see paragraph (6)(A)(ii) of this subsection.)

(C) If the person is a probationary member for whom dues are not being paid. The maximum period during which dues are not paid is six months. Entry dates cannot be back dated to cover the probationary period unless all prospective members are covered from the date entered fire department.

(D) If the person does not receive a certification of physical fitness or assignment to support duties, that person cannot be a member of the department.

(2) EMS. Until September 1, 1997, members of the local EMS Service could be included in the pension system if they meet all three of the following criteria:

(A) If they were considered by the governing entity to be part of the fire department.

(B) They were volunteers.

(C) They attended the fire drills as specified in § 1, paragraph (1), of the pension fund law.

(D) Effective September 1, 1997, the law was amended to allow "auxiliary employees." It is the responsibility of the local Board of Trustees to determine that its members comply with the definitions for volunteer and auxiliary members as outlined by the law.

(3) Fair Labor Standards Act (FLSA). Participation in the Senate Bill 411 system is affected by the Federal Fair Labor Standards Act and regulations implemented there under. Questions concerning the effect of FLSA on the department should be directed to its attorney.

~~[(A) The Federal Fair Labor Standards Act of 1985 specifically defines who a volunteer is and what this volunteer can do. According to FLSA, when a department has five or more paid members, those five or more paid members cannot serve as volunteers in the department for which they receive compensation. In other words, if a member is a fully paid member, he/she cannot return to work in his/her time off as a volunteer in that department.]~~

~~[(B) Since Senate Bill 411 was originally designed specifically for fire fighters who serve without monetary remuneration effective July 1, 1989, those participants in the Senate Bill 411 retirement fund who were serving as paid fire fighters in fire departments which had five or more paid members, could no longer participate in the Senate Bill 411 pension system. After this date, when a department hired its fifth paid member, all of the paid members had to be dropped effective that date. It was the responsibility of the local board to notify this office when this occurred. If the fire fighter was vested in the Senate Bill 411 system, he/she would receive the retirement due him/her upon application at age 55.]~~

~~[(i) These provisions of FLSA still apply to volunteer members of the pension system.]~~

~~[(ii) If there are over four fully paid, non-auxiliary members in a department, the fully paid members cannot participate in Senate Bill 411 as volunteers for that department.]~~

~~[(iii) See § 301.2(d) of this title (relating to Scope) for the crediting of service for members affected by the changes in the law. ]~~

(4) Start of Membership.

(A) During a probationary period of service before becoming a regular member of a member department, if the governing body of the department is not making contributions for the probationary service, then that person is not eligible for benefits under this Act.

(B) A department may have a probationary period of up to six months during which dues are not paid for the member. Dues will be charged based on the date entered pension system as listed on the Personnel Form 502, as long as it is not more than six months from date entered member department.

(C) Personnel Form 502 must be submitted for new members at the end of the probationary period. Failure to do so could mean denial of benefits.

(D) If there is a probationary period, it should be the same length of time for everyone in the department.

(E) If the date entered pension system is more than six months from date entered department, the commission will change date entered pension system on the Form 502 to within six months of date entered department and send a corrected copy to the department. Dues will be charged from the date established by the commission.

(5) Credit.

(A) Under TLFFRA law until September 1, 1993, prior to a department's entrance in Senate Bill 411, any fire fighter who was terminated from the department for one or more years lost any service earned before that period unless the local board ruled that the interruption in service was through no fault of the fire fighter.

(B) The department is not charged for non-qualifying years on the cost study. Effective September 1, 1989, buy-back years had to comply with minimum drill and fire requirements to qualify.

(C) Once a member of this retirement fund, the member is not penalized for nonconsecutive periods of service.

(6) Dual Benefits.

(A) Death and Retirement.

(i) A member who performs qualified service for more than one department under this Act may become eligible to receive service retirement benefits for service for each department, but, if the person dies while a member of both departments, the member's beneficiary must choose between an on-duty and off-duty benefit if applicable.

(ii) In order to be eligible for retirement benefits from two or more different departments, the member's service in the other departments must start before retirement from the primary department and he/she must start as a new member (without transferring time from the other department). See § 2A, Membership, paragraphs (b)(5) and (c) in the pension fund law book.

(B) Disability and Retirement. A member must, at the time of disability, elect between retirement or disability benefits if eligible for both. When a member, while on disability, reaches the

age of 55 the member may switch to retirement benefits if he/she so chooses. The member shall then be deemed permanently retired.

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

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

TRD-9813290

Morris E. Sandefer  
Commissioner

Fire Fighters' Pension Commission

Proposed date of adoption: December 4, 1998

For further information, please call: (512) 936-3372



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 13. Controlled Substances and Precursor/ Apparatus Rules and Regulations

##### Subchapter B. Registration

###### 37 TAC §13.22

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

The Texas Department of Public Safety proposes the repeal of §13.22, concerning Controlled Substances Registration. The section is proposed for repeal with simultaneous proposal of new §13.22 that will increase the application fee to \$25.

Tom Haas, Chief of Finance, has determined that for the first five years the repeal is in effect there will be no fiscal implications to local or state government.

Mr. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated will be to reduce the opportunity for abuse or illegal diversion of controlled substances. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the repeal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.064(a) and §481.003, which provides the director may adopt rules to administer and enforce this chapter.

Health and Safety Code, Chapter 481 is affected by this repeal.

###### § 13.22. Fee.

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

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

TRD-9813031

Dudley M. Thomas  
Director

Texas Department of Public Safety

Earliest possible date of adoption: October 4, 1998

For further information, please call: (512) 424-2890



The Texas Department of Public Safety proposes new §13.22, concerning Controlled Substances Registration Fee. The 75th Texas Legislature authorized an annual fee of not more than \$25 to cover the cost of administering and enforcing the Texas Controlled Substances Act, Subchapter C. This subchapter regulates the manufacture, distribution, and dispensation of controlled substances, chemical precursors, and chemical laboratory apparatus.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for local government. Fiscal impact to state government will be an annual increase in general revenue funds of approximately \$1,147,280. Fiscal impact to the Department of Public Safety will be administrative costs of less than \$1,000 expended for printing revised registration forms.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be adequate funding of the department's efforts to administer and enforce its regulation of highly abusable substances, thereby reducing the opportunity for abuse or illegal diversion. The cost to persons who are required to comply with the section as proposed will be the \$25 fee paid by medical practitioners, pharmacies, hospitals and other institutions, and individuals which register annually to manufacture, distribute, prescribe, possess, analyze, or dispense controlled substances. The cost for small or large businesses will be the same \$25 registration fee.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new section is proposed pursuant to the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.064(a) and §481.003, which provides the director may adopt rules to administer and enforce this chapter.

Health and Safety Code, Chapter 481, is affected by this proposal.

###### §13.22. Fee.

(a) For each original or renewal application for registration to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance, the applicant shall pay a registration fee of \$25.

(b) Applicants shall submit the fee with their application for registration or reregistration directly to the Controlled Substances Registration Section, MSC 0438, Texas Department of Public Safety, Box 15999, Austin, Texas 78761-5999.

(c) Payment shall be made in the form of a personal, certified, or cashier's check or money order, payable to the "Texas Department of Public Safety."

(d) The director will not accept a fee payment made in the form of stamps, foreign currency, or a third party endorsed check.



This 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 August 17, 1998.

TRD-9813032

Dudley M. Thomas

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2890



## Part XI. Texas Juvenile Probation Commission

### Chapter 343. Standards for Pre-Adjudication Secure Detention Facilities

#### 37 TAC §§343.1, 343.2, 343.4, 343.5, 343.9-343.11, 343.16, 343.17, 343.20

The Texas Juvenile Probation Commission proposes amendments to §§343.1, 343.2, 343.4, 343.5, 343.9, 343.10, 343.11, 343.16, and 343.17 concerning pre-adjudication secure detention facilities and new §343.20 concerning chronically overcrowded detention facilities. The amendments and new section are being proposed in an effort to clarify juvenile probation services and address the issue of chronic overcrowding in detention facilities.

Maribeth Powers, Director of Field Services, has determined that for the first five year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Ms. Powers has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be improved juvenile probation services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The amendments are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

#### §343.1. Definitions.

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

(1) Control Room—A secure area which contains the emergency, monitoring, and communications systems and is staffed 24 hours each day that juveniles are in the facility.

(2) Detention—The temporary secure custody of a juvenile pending court disposition or transfer to another jurisdiction or agency.

(3) Detention Facility Chronic Overcrowding—A detention facility shall be considered to be chronically overcrowded if, within a six month period, the daily population count taken between the hours of 6:00 am and 8:00 am exceeds the rated capacity of the facility by 20% or more on 90 or more days.

(4) Detention Officer—A person whose primary responsibility is the direct and immediate supervision of the daily activities of detained juveniles. Administrative, food services, janitorial, and other auxiliary staff are not considered to be detention officers.

(5) Hold Over Detention Facility—Any holdover facilities located in the same building or grounds with an adult correctional facility, including those authorized by Section 51.12(I), Texas Family Code, shall comply with criteria set forth in the federal Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5601, et.seq.) and any subsequent amendments, rules and interpretive commentary passed or promulgated thereto after the effective date of this standard.

(6) Rated Capacity—Maximum number of juveniles who may be housed within a facility in accordance with TJPC Standards.

(7) Secure Detention Facility—Any public or private residential facility that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action. Such facilities shall be operated separately from any post-adjudication facility. Where such facilities are located in the same building or on the same grounds as a post-adjudicatory facility, written policies and procedures require contact between the two populations be kept to a minimum.

#### §343.2. Administration, Organization, and Management.

(a) (No change.)

(b) Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities:

(1) (No change.)

(2) Duties of the Administrative Officer. The duties of the administrative officer shall include, but shall not be limited to the following:

(A) (No change.)

(B) reporting the death, attempted suicide, alleged abuse or neglect, and any serious injury that requires medical treatment by a physician or physician's assistant, of detained juvenile to TJPC and the Chief Juvenile Probation Officer of the placing county within 24 hours of discovery of the incident and in accordance with Chapter 261, Texas Family Code [Texas State Law];

(C)-(F) (No change.)

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

(c) Investigations of allegations of child abuse or neglect. Each facility shall have written policy, procedure and practice to require an internal investigation of allegations of child abuse or neglect in the facility. The policy shall require all staff members to fully cooperate with any investigation of alleged child abuse or neglect in the facility. The policy shall require that any person alleged to be a perpetrator of child abuse or neglect be put on administrative leave or

reassigned to a position having no contact with children in the facility until the conclusion of the investigation. The alleged perpetrator shall have no contact with the alleged victim(s) pending the conclusion of the internal investigation. At the conclusion of an investigation of child abuse or neglect each facility shall take appropriate measures to provide for the safety of children.

§343.4. *Personnel.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

(1) Qualifications. Selection, retention, promotion, and demotion of facility staff shall be on the basis of knowledge, skills, performance, and abilities. No person shall be discriminated against on the basis of age, sex, race, religion, national origin, or disability. Corrections officers shall be of good moral character and emotionally suited for working with juveniles. A corrections officer shall be at least 21 years of age and have either a high school diploma or a general equivalency diploma. The age requirement may be waived by the TJPC when a written request is submitted by the chair of the juvenile board or the administrative officer of a private facility. A criminal history record check and a sex offender registration database check must be conducted on each prospective employee and a copy of the results of the checks shall be kept on file. A person may not serve as a detention officer if the person is currently on community supervision or parole or serving a sentence for a criminal offense. [~~Background investigations of prospective employees shall be conducted according to county policy.~~] Preference in employment should be given to those best qualified by education and training in juvenile corrections. Preference shall be given to those with bachelors' degrees conferred by colleges and universities accredited by an organization recognized by the Coordinating Board, Texas College and University System. The administration shall make a reasonable effort to insure that the ethnic makeup of the facility staff is generally reflective of the ethnic makeup of the residents of the facility, consistent with the requirements of state and federal law.

(2)-(5) (No change.)

§343.5. *Training and Staff Development.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

(1) (No change.)

(2) New employees. The administrative officer shall ensure that corrections officers receive:

(A) orientation training within 30 days of employment; and

(B) certification in cardiopulmonary resuscitation, first aid, and the use of a physical restraint technique approved by TJPC prior to sole supervision. [~~40 hours of orientation training before undertaking their assignments. The training shall be approved by the Texas Juvenile Probation Commission. Detention officers shall maintain current certification in cardiopulmonary resuscitation and in first aid.~~]

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

§343.9. *Security and Control.*

(a) Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

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

(7) Physical Restraint. Written policy, procedure, and practice shall require facilities to adopt a TJPC approved physical restraint technique. Restraint techniques shall be restricted to instances of justifiable self-protection, protection of others, prevention of serious property damage, and prevention of escapes, and movement of juveniles from point to point, and then only as a last resort. In no event are restraint techniques justifiable as punishment, discipline, compliance and intimidation. The physical restraint shall be fully documented and reported. Restraint shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury or injury to others are absent.

(b) (No change.)

§343.10. *Rules and Discipline.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

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

(3) Enforcement. Written policy shall describe sanctions staff may impose in response to major rule violations. All such violations and corresponding staff actions shall be recorded in the juvenile's record.

(A) (No change.)

(B) Separation from the group. Room restriction or confinement may be used only when a juvenile is out of control, repeatedly refuses to comply with rules, is a threat to himself or others, is threatened by the group, or at the direction of a medical professional as a health precaution.

(i)-(ii) (No change.)

(iii) While in room confinement for suicidal behaviors, a detention officer shall personally observe, and document their observations of the juvenile at least every 5 minutes.

(C) (No change.)

§343.11. *Food Service.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

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

(6) Juveniles must be allowed adequate time to eat meals and in no case less than 10 minutes.

§343.16. *Juveniles' Rights.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

(1)-(10) (No change.)

(11) Treatment and Safety. Resident juveniles shall not be subjected to abuse or neglect as defined in Chapter 261, Texas Family Code. The following is a list of prohibited conduct:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which may have caused physical injury or death to a juvenile resident;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and TJPC standards;

(D) sexual activity;

(E) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a juvenile resident with physical or emotional harm;

(F) a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused physical or emotional injury or death to a juvenile and includes an act or omission such as the failure to establish or carry out an appropriate services based upon the needs of the child, the failure to provide adequate nutrition, clothing or health care and the failure to provide a safe environment for a juvenile served, including the failure to maintain adequate numbers of appropriately trained staff;

(G) sexual activity, including sexual exploitation as defined in §161.131 of the Texas Health and Safety Code and sexual assault as defined in §22.011 of the Texas Penal Code, involving an employee, agent or contractor and a person served. Sexual activity includes but is not limited to inappropriate sexual contact including kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee him/herself or with another person served;

(H) coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can be reasonably construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a juvenile's sexual history within standard accepted practice.

§343.17. *Programs.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

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

(3) Recreation. Indoor and outdoor recreational equipment and supplies shall be provided. The recreational schedule standards shall include:

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

(C) Physical Exercise Program. Physical exercises shall not be used for punishment, compliance, or intimidation. Physical exercises should help increase stamina, well being, self-esteem, and healthy behaviors.

(4)-(5) (No change.)

§343.20. *Chronically Overcrowded Detention Centers.*

(a) A chronically overcrowded detention center shall provide TJPC with a plan to remedy the overcrowded conditions within the facility. If the plan includes construction of new beds, there must be provisions to alleviate or manage overcrowded conditions and balance the health and safety of residents and facility staff with protection of the public.

(b) In examining the respective risks to facility occupants and the public, the population of the facility shall be reviewed to insure that:

(1) Only juveniles who meet criteria for detention under 53.02(b) of the Texas Juvenile Justice Code are detained in the facility;

(2) Priorities are established regarding the use of detention space. Such priorities should restrict the use of detention for juveniles who do not present a danger to the public, conserving bed

space in the facility for those juveniles who pose increased risks for the public; and

(3) Juveniles awaiting court appearances and transfers are processed through the system as expeditiously as possible.

(c) Facilities identified as chronically overcrowded shall provide TJPC with a monthly report that documents adherence to numbers one and two above, and that describes progress achieved on their plan to reduce overcrowding and a description of the facility population for the preceding month by offense and length of stay.

(d) Recommended Detention Criteria by Offense Severity:

(1) Detention Priority 1-Capital Felony

(2) Detention Priority 2-First Degree Felony

(3) Detention Priority 3-Second Degree Felony

(4) Detention Priority 4-Class A Misdemeanors through Third Degree Felonies involving a weapon, violence toward a person or persons, or where the child presents an imminent threat to public safety

(5) Detention Priority 5-Misdemeanor offenses involving an assault or violence toward a person or persons, or where the child presents an imminent threat to public safety

(6) Detention Priority 6-All other misdemeanor offenses and technical violations where public safety is not an issue should be restricted or other means of surveillance and control employed if such detention would cause a condition of overcrowding to occur in the facility.

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

Filed with the Office of the Secretary of State on August 21, 1998.

TRD-9813353

Steve Bonnell

Deputy Executive Director

Texas Juvenile Probation Commission

Earliest possible date of adoption: October 4, 1998

For further information, please call: (512) 424-6681



## Chapter 344. Standards for Juvenile Post-Adjudication Secure Correctional Facilities

### 37 TAC §§344.2, 344.3, 344.4, 344.8-344.10, 344.15, 344.16

The Texas Juvenile Probation Commission proposes amendments to §§344.2, 344.3, 344.4, 344.8, 344.9, 344.10, 344.15, and 344.16 concerning post-adjudication secure correctional facilities. The amendments and new section are being proposed in an effort to clarify juvenile probation services and address a wide range of issues, including investigations of child abuse, criminal background checks, physical restraint, and treatment and safety.

Maribeth Powers, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Ms. Powers has also determined that for each year of the first five years the amendments are in effect, the public benefit

anticipated as a result of enforcing the amendments will be improved juvenile probation services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The amendments are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

#### §344.2. Administration, Organization, and Management.

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

(e) Duties of the administrative officer. Written policy and procedure, and practice shall ensure that the duties of the administrative officer include, but shall not be limited to the following:

(1) (No change.)

(2) reporting the death, attempted suicide, alleged abuse or neglect, and any serious injury that requires medical treatment by a physician or physicians assistant, of detained juvenile to TJPC and the Chief Juvenile Probation Officer of the placing county within 24 hours of discovery of the incident and in accordance with Chapter 261, Texas Family Code [Texas State Law];

(3)-(5) (No change.)

(f) (No change.)

(g) Investigations of allegations of child abuse or neglect. Each facility shall have written policy, procedure and practice to require an internal investigation of allegations of child abuse or neglect in the facility. The policy shall require all staff members to fully cooperate with any investigation of alleged child abuse or neglect in the facility. The policy shall require that any person alleged to be a perpetrator of child abuse or neglect be put on administrative leave or reassigned to a position having no contact with children in the facility until the conclusion of the investigation. The alleged perpetrator shall have no contact with the alleged victim(s) pending the conclusion of the internal investigation. At the conclusion of an investigation of child abuse or neglect each facility shall take appropriate measures to provide for the safety of children.

#### §344.3. Personnel.

(a) Qualifications. Selection, retention, promotion, and demotion of facility staff shall be on the basis of knowledge, skills, performance, and abilities. No person shall be discriminated against on the basis of age, sex, race, religion, national origin, or disability. Corrections officers shall be of good moral character and emotionally suited for working with juveniles. A corrections officer shall be at least 21 years of age and have either a high school diploma or a general equivalency diploma. The age requirement may be waived by the TJPC when a written request is submitted by the chair of the juvenile board or the administrative officer of a private facility. A criminal history record check and a sex offender registration database check must be conducted on each prospective employee and a copy of the results of the checks shall be kept on file. A person may not serve as a detention officer if the person is currently on community supervision or parole or serving a sentence for a criminal offense. [Background investigations of prospective employees shall

~~be conducted.] Preference in employment should be given to those best qualified by education and training in juvenile corrections. Preference shall be given to those with bachelors' degrees conferred by colleges and universities accredited by an organization recognized by the Coordinating Board, Texas College and University System. The administration shall make a reasonable effort to insure that the ethnic makeup of the facility staff is generally reflective of the ethnic makeup of the residents of the facility, consistent with the requirements of state and federal law.~~

(b)-(e) (No change.)

#### §344.4. Training and Staff Development.

(a) (No change.)

(b) New employees. Written policy, procedure and practice of the administrative officer shall ensure that corrections officers receive:

(1) orientation training within 30 days of employment;  
and

(2) certification in cardiopulmonary resuscitation, first aid, and the use of a physical restraint technique approved by TJPC prior to sole supervision. [40 hours of Texas Juvenile Probation Commission approved orientation training prior to undertaking their job assignments. All juvenile corrections officers shall maintain current certification in cardiopulmonary resuscitation (CPR) and first aid.]

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

#### §344.8. Security and Control.

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

(e) Classification Plan. The security of the facility shall be designed and constructed so that residents can be grouped in accordance with a classification plan. Classification plans shall require that juvenile inmate populations of progressive sanctions level 5 and below be physically segregated from committed (level 6 and 7) juvenile inmates.

(f)-(j) (No change.)

(k) Physical Restraint. Written policy, procedure, and practice shall require facilities to adopt a TJPC approved physical restraint technique. Restraint techniques shall be restricted to instances of justifiable self-protection, protection of others, prevention of serious property damage, and prevention of escapes, and movement of juveniles from point to point, and then only as a last resort. In no event are restraint techniques justifiable as punishment, discipline, compliance and intimidation. The use of force shall be fully documented and reported. Restraint shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury or injury to others are absent.

#### §344.9. Rules and Discipline.

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

(c) Enforcement.

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

(3) Confinement. Written policy, procedure, and practice shall ensure that when a juvenile has been charged with a minor rules violation requiring confinement for the safety of the juvenile, other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to 24 hours. Confinement for periods of more than 24 hours shall be reviewed every 24 hours by an administrator or designee who was not involved in the

incident. Confined juveniles shall not be restrained by mechanical devices unless their behavior indicates that there is a danger that they might harm themselves or others, damage property, or attempt to escape. While in room confinement, a corrections officer shall personally observe, and document their observations, the juvenile at least every 15 minutes. While in room confinement for suicidal threats, a corrections officer shall personally observe, and document their observations of the juvenile at least every 5 minutes.

(4)-(5) (No change.)

§344.10. *Food Services.*

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

(g) Juveniles must be allowed adequate time to eat meals and in no case less than 10 minutes.

§344.15. *Juvenile Rights.*

(a)-(g) (No change.)

(h) Treatment and Safety. Resident juveniles shall not be subjected to abuse or neglect as defined in Chapter 261, Texas Family Code. The following is a list of prohibited conduct:

(1) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which may have caused physical injury or death to a juvenile resident;

(2) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(3) any use of chemical or bodily restraints not in compliance with federal and state laws and TJPC standards;

(4) sexual activity;

(5) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a juvenile resident with physical or emotional harm;

(6) a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused physical or emotional injury or death to a juvenile and includes an act or omission such as the failure to establish or carry out an appropriate services based upon the needs of the child, the failure to provide adequate nutrition, clothing or health care and the failure to provide a safe environment for a juvenile served, including the failure to maintain adequate numbers of appropriately trained staff;

(7) sexual activity, including sexual exploitation as defined in §161.131 of the Texas Health and Safety Code and sexual assault as defined in §22.011 of the Texas Penal Code, involving an employee, agent or contractor and a person served. Sexual activity includes but is not limited to inappropriate sexual contact including kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee him/herself or with another person served;

(8) coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can be reasonably construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a juvenile's sexual history within standard accepted practice.

§344.16. *Programs.*

(a)-(g) (No change.)

(h) Physical Training Program. Written policy, procedure, and practice shall include a written physical training program plan. The program plan shall include time limits, type of exercises, and an initial screening to determine a juveniles physical functioning level. Physical exercises shall not be used for punishment, compliance, or intimidation. Physical exercises should help increase stamina, well being, self-esteem, and healthy behaviors.

This 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 August 21, 1998.

TRD-9813354

Steve Bonnell

Deputy Executive Director

Texas Juvenile Probation Commission

Earliest possible date of adoption: October 4, 1998

For further information, please call: (512) 424-6681

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 69. Contracted Services

##### Subchapter L. Contract Administration

###### 40 TAC §69.212

The Texas Department of Human Services (DHS) proposes new §69.212, concerning year 2000 responsibilities, in its Chapter 69, Contracted Services. The purpose of the new section is to require DHS contractors to make reasonable efforts to ensure against any problems that may result from Year 2000 computer problems.

Eric M. Bost, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to protect the public by requiring DHS contractors to prepare for Year 2000 eventualities. The new section will not generate any additional costs for businesses, large or small, because preparing for Year 2000 changes is part of the normal cost of doing business. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-320, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

The new section is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new section implement the Human Resources Code, §§22.001- 22.033.

§69.212. Year 2000 Responsibilities.

In respect to all contracts in effect after December 31, 1999: All services provided under contract with the Texas Department of Human Services (DHS) are required, as a condition of the contract, not to constitute a threat to the health and safety of DHS clients as a result of computer software, firmware, or imbedded logic unable to recognize different centuries or more than one century on or after January 1, 2000.

This 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 August 21, 1998.

TRD-9813365

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: November 1, 1998

For further information, please call: (512) 438-3765



## TITLE 43. TRANSPORTATION

### Part III. Automobile Theft Prevention Authority

#### Chapter 57. Automobile Theft Prevention Authority

##### 43 TAC §57.36

The Automobile Theft Prevention Authority (ATPA) proposes amendments to §57.36, concerning the level of funding for projects receiving ATPA grant funds. ATPA has statutory authority to determine funding levels. ATPA previously published a proposed amendment to this section which removed the required grantee match contribution March 18, 1997, (22 TexReg 2839). That proposed amendment was adopted, on April 17, 1997, but the *Texas Register* never published it, due to the transition of transferring ATPA rules from Title 1 to Title 43 of the Texas Administrative Code. As a result, the rule, as amended, was automatically withdrawn on October 10, 1997, (22 TexReg 10127). Proposed changes to subsections (a) and (d), again, delete the requirement for a cash or in-kind match by a grantee in order to receive ATPA funds after the second year of funding. The current maximum levels of funding as provided in subsection (a) are not changed. However, in subsection (d) and new subsection (e), the board proposes to allow a grantee to request ATPA funds above their 80% maximum of their second year award in a project's third grant year and thereafter, provided the grantee contributes a cash match of 20% of the total ATPA funds awarded. Currently, a grantee, beginning in the third year of a project, is restricted to a maximum funding level of 80% of the second year award. The original intent of this restriction was to encourage projects to become, in part, self-funded. Inadvertently, this restriction has prevented ATPA

from awarding sufficient funding to successful projects after the second year. Under the proposed option, ATPA will consider increased funding above the 80% restriction for qualified projects to assist in covering annual cost increases and to support continued growth. However, in order to receive this additional funding a grantee must contribute a 20% cash match, which must be expended prior to the expenditure of any ATPA funds. In this manner, ATPA hopes to encourage self-funding and at the same time provide sufficient ATPA funding for successful projects that should be continued at current activity levels or expanded. Other changes in text are proposed for grammar, consistency, and format.

Agustin De La Rosa, Director of the ATPA, has determined that for each year of the first five years that the rules, as amended, will be in effect, there may be some fiscal implications to state and local governments who are ATPA grantees, as a result of enforcing or administering the rule as proposed for amendment. An actual dollar amount cannot be determined. The fiscal implications for a particular governmental body will be determined by the amount of funds requested by the respective governmental body above the 80% funding level of the grantee's second year award and the requirement that the cash match contributions be expended prior to the ATPA funds awarded. If a governmental body chooses to apply for additional funding, then matching funding will be required, which means an increase in agency expenses. At the same time, however, the governmental body will receive additional ATPA funds which will be used, in addition to agency funding, to offset increased costs of an on-going project. It is not anticipated that any mandatory increase or decrease in expenses as result of these proposed amendments will occur, since participation by local governments is permissive. Also, the 80% funding level beginning in the third year is a current restriction. There will be no other fiscal implications to state government as a result of enforcing or administering the rule, as proposed for amendment.

Mr. De La Rosa also has determined that for each year of the first five years the rule as amended will be in effect, the public will benefit by the continued ATPA funding for successful ATPA projects without requiring a cash match and by the availability of additional ATPA funding, for the growth of successful projects, beyond their second year. Additionally, for the same period of time, Mr. De La Rosa has determined that there is no anticipated economic costs to persons required to comply with the rule as proposed for amendment, except as already explained above in the fiscal implications for governmental bodies who are ATPA grantees. There is no anticipated effect on small businesses.

Comments on the proposal may be submitted to Agustin De La Rosa, Director, Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704, for a period of 30 days following publication in this issue of the *Texas Register*.

This amendment is proposed under Texas Civil Statutes, Article 4413(37), §6(a). The ATPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties, which includes determining levels of funding for the ATPA grant projects as part of its plan for providing financial support to combat automobile theft and economic automobile theft as required by §7 and §8 of Article 4413(37).

§57.36. *Level of Funding for Grant Projects.*

(a) The level of ATPA funding for a project will not exceed the following annual rates:

(1) Years 1 and 2 – 100% of the grant request for each year.

(2) Year 3 and thereafter – 80% of the second year award thereafter. [The formal definition of match is any article, service, facility or personnel expenses provided for use by the grant recipient, not to exceed 20% of the grantee's second year award OR the 1994 award as a benchmark, subject to review by the Executive Director and ATPA Board, and to availability of funds. The level of funding for projects receiving ATPA funding will be at the following ratios of maximum ATPA funds and minimum local cash and/or in-kind match contributions (ATPA - funded indirect costs excluded):-]

[Figure 4: 43 TAC §57.36(a)]

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

(d) A grantee, in an 80% ATPA funding year, may apply for:

(1) ATPA funding in an amount not to exceed 80% of the second year award without a cash match; or

(2) additional ATPA funding above 80% of the second year award, if the grantee contributes a cash match of 20% of the total ATPA award. [Grantees who are in their 80% ATPA funding

year may either apply for 80% of the second Fiscal Year grant funds without match or provide documentation for 20% of cash and/or in-kind contribution match, if the grantee chooses to show its local contribution to the grant program.]

(e) A grantee awarded additional ATPA funds as provided in subsection (d) of this section must expend its 20% cash contribution prior to the expenditure of any ATPA funds.

This 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 August 18, 1998.

TRD-9813115

Agustin De La Rosa

Director

Automobile Theft Prevention Authority

Earliest possible date of adoption: October 4, 1998

For further information, please call: (512) 416-4606

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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 19. EDUCATION**

### **Part I. Texas Higher Education Coordinating Board**

#### **Chapter 12. Proprietary Schools**

##### **Subchapter A. Purpose and Authority**

###### **19 TAC §12.24**

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption the proposed amendment to §12.24, which appeared in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2680).

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

TRD-9813523

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: August 25, 1998

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



##### **Subchapter B. Basic Standards**

###### **19 TAC §12.52**

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption the proposed amendment to §12.52, which appeared in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2680).

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

TRD-9813524

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: August 25, 1998

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



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part I. Texas Department of Human Services**

#### **Chapter 69. Contracted Services**

##### **Subchapter L. Contract Administration**

###### **40 TAC §69.212**

The Texas Department of Human Services has withdrawn from consideration for permanent adoption the proposed new §821.326, which appeared in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8034).

Issued in Austin, Texas, on August 21, 1998.

TRD-9813364

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 21, 1998

For further information, please call: (512) 438-3765



# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 3. Boll Weevil Eradication Program

##### Subchapter H. Use of Bio-Intensive Controls in Active Boll Weevil Eradication Zones

###### 4 TAC §§3.400-3.405

The Texas Department of Agriculture (the department) adopts new §3.400-3.405, concerning the use of bio-intensive controls in active boll weevil eradication zones, with changes to the proposal published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7160). The new sections are adopted to provide procedures and requirements to allow a cotton grower in an active boll weevil eradication program to use bio-intensive controls as pest control methods, in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D, §74.130. Sections 3.400, 3.401 and 3.403 are adopted with changes. Sections 3.402, 3.404 and 3.405 are adopted without changes and will not be republished.

The definition of "Bio-intensive control" in §3.400 has been changed to clarify that bio-intensive controls do not include traditional chemical control methods. Section 3.401(a) has been changed to clarify that approval is not required for use of traditional cultural practices such as delayed planting or early stalk destruction. Section 3.401(d)(4) has been changed to state that the Texas Boll Weevil Eradication Foundation (Foundation) shall consider how the use of alternative methods would impact cotton in the eradication zone in question. Section 3.401(f) has been changed to require that the appeal process for a denial of a request to use bio-intensive control methods be completed prior to traditional planting dates. Section 3.403 has been changed to add a new subsection (a) which provides that upon approval for use of bio-intensive control methods, treatment must be made within 48 hours of notification or be subject to withdrawal of approval, and the time to appeal the withdrawal of certification has been changed from 10 to 5 days at subsection (d). Other subsections in §3.403 have been redesignated to allow for new subsection (a). New §§3.400-3.405 provide a definition of bio-intensive control, procedures for requesting to use bio-intensive controls, items to be considered by the Foundation in reviewing requests, recordkeeping and treatment requirements, procedures for appeals of denial of a request or withdrawal of approval once given, and requirements for payment of costs of bio-intensive controls.

Comments on the proposal were received from the South Texas Cotton and Grain Association, Inc., the Texas Agricultural Extension Service and the Foundation. The South Texas Cotton and Grain Association and the Foundation expressed concern with the amount of time allowed for the grower to appeal a withdrawal of certification and recommended that the time be shortened to reduce the time a field would go untreated. The department agrees that the time can be shortened to 5 days and still provide adequate time for the grower's appeal, and has incorporated this change into §3.403(d). The Texas Agricultural Extension Service and the Foundation expressed concern that the definition of bio-intensive controls is too broad as proposed and, although not intended, could be interpreted to include practices that have become standard production practices for Texas cotton producers. The Department agrees that this was not the intent of the regulation and has changed §3.400 accordingly. The Foundation also recommended that the Foundation be required to consider how the use of alternative methods would impact cotton in eradication zones, that the appeal process for denial of a request to use bio-intensive control methods be completed prior to planting and that once approval has been given for use of bio-intensive control methods, that the requester be required to treat as approved. The department agrees with these recommendations and has incorporated these into the sections as adopted.

The new sections are adopted under the Texas Agriculture Code, §74.130, which directs the commissioner of agriculture to develop and adopt rules to allow a cotton grower in an eradication program to use biological, botanical, or other non-synthetic pest control methods.

###### §3.400. Definitions.

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

- (1) Bio-intensive control – the use of biologically based pest control tactics, rather than traditional chemical control methods. Biologically based pest control tactics include biological controls, resistant host plants, cultural controls, botanical insecticides or sterile insect techniques that cause little or no detrimental effect on non-target organisms.
- (2) Department – Texas Department of Agriculture.
- (3) Foundation – Texas Boll Weevil Eradication Foundation.
- (4) Work unit – That area of cotton within a boll weevil eradication zone overseen by a Foundation Field Unit Supervisor.

*§3.401. Request for Approval to Use Bio-intensive Control Method(s).*

(a) Any cotton producer who wishes to use a bio-intensive control method in an active boll weevil eradication zone shall request approval in writing from the Foundation at least 90 days prior to traditional cotton planting dates in the area in which he farms. Exceptions are:

- (1) for the use of traditional cultural practices like delayed uniform planting or early stalk destruction; and
- (2) for fields on which a grower has certified organic production.

(b) The request shall be considered by the Foundation and shall be granted or denied in writing at least 30 days prior to traditional planting time, and if approved, certification issued designating the time period for which the approval is valid.

(c) In the request for use of bio-intensive controls, the grower must state:

- (1) the specific locations of the cotton fields;
- (2) the alternative control(s) to be used and its source and availability;
- (3) the expected date of crop planting;
- (4) the duration and timing expected in using the control method(s);
- (5) any scientific or field study trials relevant to the request;
- (6) the expected cost for using the alternative method;
- (7) the plan for coordinating the monitoring methods between the Foundation and the grower;
- (8) the grower's name, address and phone numbers; and
- (9) other pertinent information the grower wishes to be used in determining approval for the use of alternative controls.

(d) In making its decision to grant approval for bio-intensive control methods in an active boll weevil eradication program, the Foundation shall consider:

- (1) any and all scientific or field study trials relevant to the requested alternative method, giving special attention to studies conducted in similar growing regions;
- (2) whether the grower has the fiscal means to pay for the alternative control method and pay any assessment;
- (3) the overall progress of the boll weevil eradication program in the area and the location of the cotton on which alternative methods are proposed to be used;
- (4) how the use of alternative methods would impact cotton in the eradication zone in question; and
- (5) the recommendation from the Foundation technical committee.

(e) If a bio-intensive control method is approved by the Foundation in accordance with subsection (b) of this section, the grower shall document treatment dates and outcomes, and make the records available to the Foundation at a pre-determined time, and stay in weekly contact with the Foundation's Field Unit Supervisor for his area for updates on weevil numbers trapped and area weevil infestation counts.

(f) If the Foundation disapproves the request to use bio-intensive control methods in accordance with subsection (b) of this section, the grower may appeal the decision in writing, within 10 days of receipt of the notification of disapproval, to the Department and furnish any additional information the grower wants considered. The Department shall determine whether the Foundation complied with this subchapter in making its decision and rule on the appeal within 15 days of the receipt of the grower's filing of an appeal. This process must be completed prior to traditional planting dates.

*§3.403. Withdrawal of Approval to Use Bio-Intensive Control Methods.*

(a) Fields meeting Foundation pest thresholds, and approved for bio-intensive control methods, must be treated within 48 hours of the Foundation's notification to the grower or his designee, or the Foundation will withdraw approval in writing.

(b) If weevil numbers in traps or field infestations monitored by the Foundation in the field(s) approved for bio-intensive control methods exceed those in a majority of fields within the Foundation's work unit by 25 percent for any period of time during mid-season spraying, the Foundation shall notify the grower of this event.

(c) If, after discussion between the grower and the Foundation, no other alternative is available, the grower's approval to use a bio-intensive control method shall be withdrawn by the Foundation and notice of withdrawal provided to the grower in writing.

(d) A grower may appeal the withdrawal of the certification to the Department within 5 days of receipt of the notice of withdrawal. The grower shall provide a notice of the appeal to the Foundation. The Foundation shall not treat the grower's field while TDA reviews the appeal. In making its decision on the appeal, the Department shall consider the impact the decision will have on the overall success of the eradication program in the zone.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1998.

TRD-9813114

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 7, 1998

Proposal publication date: July 10, 1998

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



## Chapter 17. Marketing and Development Division

### Subchapter C. TAP, Taste of Texas, Vintage Texas, Texas Grown and Naturally Texas Promotional Mark

#### 4 TAC §§17.51, 17.52, 17.54

The Texas Department of Agriculture (the department) adopts amendments to §§17.51, 17.52, and 17.54 concerning the department's marketing programs promoting Texas agricultural products. Section 17.52 is adopted with changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6108). Sections 17.51 and 17.54 are adopted without changes and will not be republished. The

department adopts the amendments to clarify the qualifications for membership in the programs, to limit restaurant membership to those food service companies that process packaged products for resale, and to give the department additional discretion in determining program eligibility.

Section 17.52 is adopted with changes. An additional change was made to §17.52(b)(2) so that the last two sentences now read: "A food service company, including a restaurant, is not eligible for membership unless it processes a packaged product for resale, in which case, the mark may only be used to promote the specific program-eligible products. Food service companies or restaurants may not use the mark in any general fashion to promote the business or its services." This change was made to clarify this section as it relates to food service companies and restaurants.

Amendments to § 17.51 define the word "processed" for purposes of the programs and add language to reflect trademark registration for the programs and to make that language consistent throughout the section. Amendments to §17.52 clarify requirements for Taste of Texas program membership. Specifically, amended §17.52(b)(2) excludes any food service company, including a restaurant, from program eligibility, unless it processes a packaged product for resale, and prohibits the use of the mark by a company or restaurant to generally promote a business or its services. The amendment to §17.54(5) grants the department additional discretion in determining program eligibility.

One comment on the proposal was received from Last Place in Texas, Inc. d/b/a Taste of Texas restaurant expressing concern that proposed §17.52(b)(2) could be interpreted to mean that a restaurant or food service company could use the program mark in any manner so long as the restaurant or food service company also processes a packaged food product for resale. Adopted § 17.52(b)(2) has been changed from the proposed language to address this concern. As noted previously, the change made to the proposal further clarifies the permitted uses of the Taste of Texas mark, as it relates to food service companies and restaurants.

The amendments are adopted under the Texas Agriculture Code § 12.016, which provides that the department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code; and § 12.017, which authorizes the department to regulate the use of the term "Texas Agricultural Product" by rule.

§17.52. *Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, or Naturally Texas Promotional Mark.*

(a) (No change.)

(b) Unless permission is otherwise granted by the department:

(1) (No change.)

(2) the Taste of Texas promotional mark may only be utilized by Taste of Texas program members. The Taste of Texas program is a program established by the department to promote the retail sale and wholesale of agricultural food products processed in Texas, regardless of origin, and unprocessed agricultural food products grown in Texas. A food service company, including a restaurant, is not eligible for membership unless it processes a packaged product for resale, in which case, the mark may only be used to promote the specific program-eligible products. Food service

companies or restaurants may not use the mark in any general fashion to promote the business or its services.

(3)-(5) (No change.)

(c)-(n) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1998.

TRD-9813113

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 7, 1998

Proposal publication date: June 12, 1998

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

## TITLE 7. BANKING AND SECURITIES

### Part I. Finance Commission of Texas

#### Chapter 1. Consumer Credit Commissioner

##### Subchapter A. Regulated Loan Licenses

##### Division 1. General Provisions

##### 7 TAC §1.12

The Finance Commission of Texas (the commission) adopts the repeal of §1.12. This repeal is necessary as the section relates to allowable charges and terms of loans under Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapters 3 through 5. This repeal is adopted without changes to the proposal as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6815).

The agency received no comments on the proposal.

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

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Article 5069, Chapter 3A, Subchapters E and F.

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 August 17, 1998.

TRD-9813037

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Effective date: September 6, 1998

Proposal publication date: July 3, 1998  
For further information, please call: (512) 936-7640

◆ ◆ ◆  
**Division 2. Application for License and Transfer  
of License**

**7 TAC §1.35, §1.42**

The Finance Commission of Texas (the commission) adopts the repeal of §1.35 and §1.42. This repeal is necessary as the sections relate to the issuance and display of licenses under Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapters 3 through 5. This repeal is adopted without changes to the proposal as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6815).

The agency received no comments regarding the proposal.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-7640

◆ ◆ ◆  
**Division 6. Deferment Charges**

**7 TAC §§1.111-1.116**

The Finance Commission of Texas (the commission) adopts the repeal of §§1.111 - 1.116. This repeal is necessary as the sections relate to allowable charges and terms of loans under Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapters 3 through 5. This repeal is adopted without changes to the proposal as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6816).

The agency received no comments on the proposal.

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

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Article 5069, Chapter 3A, Subchapters E and F.

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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Leslie L. Pettijohn  
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For further information, please call: (512) 936-7640

◆ ◆ ◆  
**Subchapter D. License**

**7 TAC §§1.401-1.407**

The Finance Commission of Texas (the commission) adopts new §§1.401 - 1.407, concerning the provisions related to license issuance. The sections are adopted without changes to the proposed text as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6816).

Section 1.401 discusses the authorized activities of licensed lenders operating multiple branches.

Section 1.402 explains the requirement for displaying licenses.

Section 1.403 describes the agency's procedure for providing delinquent notices to licensees who have failed to pay an annual license fee.

Section 1.404 details the effect of a license revocation upon the authority to collect existing contracts.

Section 1.405 prescribes the process for a new application after a former licensee has had a license revoked.

Section 1.406 clarifies the procedure for a licensee to surrender a license.

Section 1.407 provides the procedure for returning license certificates upon the reissuance of a license.

The rule adoption is necessary in order to provide basic procedures concerning licenses and correspond with the adoption of the new statute. Most of the provisions have been in effect as standard procedures and are simply modern revisions of existing rules. The proposed 7 TAC §1.401 will enhance portability of operations for licensed lenders operating multiple branches.

The agency received no comments regarding the proposal.

The new sections are adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter D is affected by these proposed new sections.

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-9813039

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640



## Subchapter E. Interest Charges in Loans

### 7 TAC §§1.501, 1.502, 1.504, 1.505

The Finance Commission of Texas (the commission) adopts new §§1.501, 1.502, 1.504, and 1.505, concerning the methods for calculating maximum interest charges, additional interest for default and deferment under Subchapter E, Chapter 3A, Texas Civil Statutes, Article 5069. Additionally, the rules prescribe appropriate procedures for these transactions. The sections are adopted with nonsubstantive changes to the proposed text as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6817). The only change is the modification of the subchapter heading.

Section 1.501 describes the manner for determining the maximum rate or amount of interest by type of transaction.

Section 1.502 details the treatment of odd periods of time, generally those less than a full month, for calculating interest.

Section 1.503 clarifies the procedures for assessing and collecting default charges in connection with a Subchapter E loan.

Section 1.504 explains the method and procedures for calculating and collecting a deferment charge on a Subchapter E loan.

These rules are necessary due to the repeal of the former Article 5069-3.15 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

The agency received no comments regarding the proposal.

The new sections are adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter E is affected by these proposed new sections.

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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Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640



## Subchapter F. Alternate Charges for Consumer Loans

### 7 TAC §§1.601, 1.603, 1.604

The Finance Commission of Texas (the commission) adopts new §§1.601, 1.603, and 1.604, concerning the methods for calculating maximum interest charges and additional interest for default and deferment under Subchapter F, Chapter 3A, Article 5069. Additionally, the rules prescribe appropriate procedures for these transactions. The sections are adopted without changes to the proposed text as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6819).

Section 1.601 describes the manner for determining the maximum rate or amount of interest for this type of transaction.

Section 1.603 clarifies the procedures for assessing and collecting default charges in connection with a Subchapter F loan.

Section 1.604 explains the method and procedures for calculating and collecting a deferment charge on a Subchapter F loan.

These rules are necessary due to the repeal of the former Article 5069-3.16 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

The agency received no comments regarding the proposal.

The new sections are adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

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

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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Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640



## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 80. Manufactured Housing

##### Codes and Standards

###### 10 TAC §80.1

The Texas Department of Housing and Community Affairs (Department) Manufactured Housing Division adopts repeal of §§80.1, §§80.21 - 80.29, §§80.36 - 80.41, §§80.51 - 80.65, §80.67, §80.118, §80.121, §§80.123 - 80.126, §§80.129 - 80.132, §80.135, §§80.181 - 80.186, §§80.201 - 80.208, the Manufactured Housing Rules. The repeal is adopted without changes. The sections are repealed to allow for adoption of new sections that will update the rules substantially in order to comply with the Texas Manufactured Housing Standards Act, Article 5221f, effective on September 1, 1997.

The installation standards in §§80.51 - 80.63 and §80.121 will become effective 60 days after the date of publication of the notice as required by the Texas Manufactured Housing Standards Act, Article 5221f, §9(g). All other rules will become effective 20 days after filing as specified by Chapter 2001, Government Code.

No comments were received regarding adoption of the repeal.

The repealed section is adopted under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the repealed section.

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 August 20, 1998.

TRD-9813296

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: September 9, 1998

Proposal publication date: May 8, 1998

For further information, please call: (512) 475-3726



## Fee Structure

### 10 TAC §§80.21–80.29, 80.36–80.41

The repealed sections are adopted under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the repealed sections.

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-9813297

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



## Standards and Requirements

### 10 TAC §§80.51–80.63, 80.64, 80.65, 80.67

The repealed sections are adopted under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the repealed sections.

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-9813298

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: May 8, 1998

For further information, please call: (512) 475-3726



## General Requirements

### 10 TAC §§80.118, 80.121, 80.123–80.126, 80.129–80.132, 80.135

The repealed sections are adopted under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the repealed sections.

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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Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



## Consumer Notice Requirements

### 10 TAC §§80.181–80.186



The repealed sections are adopted under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the repealed sections.

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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Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



## Titling

### 10 TAC §§80.201–80.208

The repealed sections are adopted under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the repealed sections.

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 August 20, 1998.

TRD-9813303

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



## Subchapter A. Codes and Standards

### 10 TAC §80.10

The Texas Department of Housing and Community Affairs ("TDHCA") adopts new §§80.10, 80.11, 80.20, 80.50-80.56, 80.62-80.64, 80.66, 80.119-80.123, 80.125-80.128, 80.130-80.132, 80.135, 80.180, and 80.202-80.208, Manufactured Housing Rules, 10 Texas Administrative Code, Chapter 80, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4451).

A public hearing was held on Tuesday, June 24, 1998. The following interested groups or associations presented comments: Texas Manufactured Housing Association ("TMHA"), and the

Manufactured Housing Citizens Advisory Commission ("Advisory Commission").

A public hearing was held on Tuesday, June 24, 1998. Some parties that offered comments at the public hearing also filed written comments addressing some of the issues they addressed at the hearing. All comments, both oral and written, are discussed together infra. Following a summary of the comments is a statement of the reasons why the department disagrees with the party submissions or proposals.

#### GENERAL COMMENTS ON THE RULES:

The following comments were received regarding the proposed new rules in general, rather than any specific section:

The Manufactured Housing Citizens' Advisory Commission, a group of industry and consumer representatives that met for nine months to consider changes to the current rules of the Manufactured Housing Division, stated their unanimous support for the proposed rules. Texas Manufactured Housing Association (TMHA) also stated its support. TMHA Rio Grande Chapter also spoke in support of the rules, and asked that their enforcement be done with common sense and not with a zero tolerance policy. These were the only groups or organizations that expressed an opinion either for or against the rules. Additionally, ten individual commenters supported the adoption of the proposed rules as published in the *Texas Register* on May 8, 1998 (Volume 23, Number 19).

One commenter believed the rules will cause prices to increase and manufactured housing will no longer be affordable housing. Another commenter said that manufactured housing should be deregulated, that caveat emptor should be the rule, and banks should enforce requirements rather than the state. One commenter said labor costs will increase because of the need to hire more experienced workers to conform to the installation standards.

TDHCA believes that the rise in cost will be partially offset by probable reductions in cost as a result of the concurrent repealing of §§80.28(a), 80.64(g), 80.123, 80.129, 80.186, and 80.203. As for the cost of workers, TDHCA responds that the proposed rules contain detailed drawings that will facilitate installations and will not necessarily mean that only experienced workers can install the homes. Concerning enforcement, as stated in §2 of Article 5221f, Texas Manufactured Housing Standards Act, the Texas Legislature has determined that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufactured manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies.

One commenter said that TDHCA could eliminate the problem of not being able to locate unlicensed installers by requiring that proof be submitted to the utility companies prior to the hook-up of the electricity and plumbing. If a certification is not provided to the utility companies, the homeowner will have to find someone to inspect and certify their installation before the utilities are operational. Another commenter said that homeowners cannot obtain wind zone insurance if they install their own home without a license or hire an unlicensed installer to install their home. To qualify for insurance, they need to hire a licensed installer to approve or correct the installation.

TDHCA agrees that requiring proof of proper installation procedures in order to have utilities hooked up would help eliminate the problem of unlicensed installers, but because of complicated jurisdictional issues raised by such a solution, it will require more study. The Texas Windstorm Insurance Association has the authority to adopt procedures concerning the insurability of manufactured homes.

One commenter said there are installation inspections performed on homes that have been installed for over a year. The soil can change and people have been known to take the piers out from under their home and use them for some other purpose. He suggested that TDHCA should guarantee that a home will be inspected 30 or 40 days after installation, or else the installer won't be liable if something changes. Another commenter said the diagrams and charts are more explicit than the old rules and easier to understand. One commenter said that the new installation rules are a scam to the public and will cost more money than what it should. A commenter said that all retailers should be licensed as retailers, brokers and installers.

TDHCA responds that it performs installation inspections as soon as possible, given budget restraints, and under the Act it is only required to inspect 25% of homes unless there is a consumer complaint, which can come later than 30 or 40 days after installation. TDHCA agrees that the charts and diagrams are more explicit than the old rules, and disagrees that the rules are a scam. As stated above, the Texas Legislature has determined that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies.

#### COMMENTS ON SPECIFIC SECTIONS OF THE RULES:

There were no comments on §80.10 (Codes and Standards), §80.11 (Definitions), or §80.20 (Fee Structure). There were general and specific comments on Subchapter D, §§80.50 to 80.66 (Standards and Requirements). First to be addressed are the general comments on this subchapter.

The Manufactured Housing Citizens' Advisory Commission stated that the proposed generic installation standards are better and safer procedures for both the consumer and the installer than those set out in the present rules. A member of the Advisory Commission's Subcommittee on Installations said the costs to install a manufactured home under the new proposed rules may increase slightly (estimated increase: Wind Zone I to increase an additional amount between \$125 to \$175 for a single section home, \$385 to \$425 for a multi-section and Wind Zone II to increase an additional amount between \$265 to \$315 for a single section and \$475 to \$515 for a multi-section).

One commenter asked that the installation requirements be simplified, because there are too many different manufacturer specifications. He suggested one state code for all manufacturers and all secondary installations. Another commenter stated that some of the installation standards appear to apply to new homes, but the standards are also required on used homes (secondary installations). There is not enough difference between new home and used home generic installation standards.

TDHCA responds that the proposed generic rules could be used in lieu of the various manufacturers' installation instructions.

#### COMMENTS ON §80.50:

A commenter asked if Wind Zone I homes can be sold and installed in Wind Zone II if built prior to September 1, 1997.

TDHCA responds that yes, that is the current state law.

#### COMMENTS ON §80.51:

One commenter stated that a number of manufacturers are not pleased about having to send out their amended installation manuals or installation instructions 30 days in advance of the effective date for the new modification or changes. Another commenter asked for clarification regarding the "notification of changes" procedure when manufacturers make modifications to the installation instructions. If a manufacturer makes changes and wants to inform their retailers, can the manufacturer do it the next week?

TDHCA responds that the manufacturer can notify its retailers immediately, but before the change is effective (and thus enforceable), the retailer would have 30 days to implement it.

#### COMMENTS ON §80.52 (Permanent Foundation Criteria):

A commenter objected to a lender being able to certify a foundation as permanent, and also pointed out that an engineer's design may or may not meet the criteria for a permanent foundation.

TDHCA responds that proposed §§80.52(a)(7) and 80.52(b) are substantively identical to current §80.52, which describes permanent foundations. The provision was enacted in the late 1980's at the request of mortgage lenders who wanted to reduce the cost of regulation of permanent foundations by eliminating the necessity for an additional inspection and approval beyond the one required by the lender. The system has worked well, so the provisions were kept.

There were no comments on §80.53 (Manufacturer's Design Requirements).

#### COMMENTS ON §80.54:

Concerning the site preparation notice, the following comments were made:

Several commenters agreed with the rule requiring notice of site preparation to be given to the consumer. Several also commented on the need to educate the homeowner further about the consequences of placing their home on an improperly prepared site. One commenter stated that he thought many consumers would sign the site preparation notice without reading it, that it was wrong to absolve the industry of any responsibility, and sometimes the retailer ought to tell the consumer to wait until the soil dries up before installing the home. Several commenters said that they thought it was the responsibility of the consumer to prepare the site. One commenter expressed his opinion that the issue was one of policy: should the State tell an individual he or she cannot buy a home and install it on a particular piece of property because it's not suitable from the standpoint of site preparation. He pointed out that the Advisory Commission fought through these issues for several days and came up with probably the best compromise that could be achieved at this time.

TDHCA agrees with the last commenter. The Advisory Commission, with input from both TMHA and department staff, discussed the site preparation notice extensively. Existing rules and the proposed rules hold the retailer responsible for the proper installation of a new home, and the contracting installer for the proper installation of a used home. Except in a rental

community, site preparation is the responsibility of the homeowner. The proposed rule tries to ensure that the homeowner makes an informed decision when deciding where to locate the home.

A commenter noted that the site preparation notice states "... the installer must give the homeowner the notice prior to any agreement for the secondary installation of the home." She noted that often the agreement to install a used home is made over the phone, and questioned whether "any agreement" means any written or verbal agreement. She asks whether the consumer could sign the notice immediately before the installation agreement and the home installation.

TDHCA responds that the wording of the site preparation notice assumes that the sales or installation agreement is in writing. Even though the consumer needs time after the notice to prepare the site, the proposed rule does not require a time period between the date of the notice and the installation agreement or home installation.

A commenter suggested that a paragraph be added to the site preparation notice which stated "The retailer and/or the installer should notify you, the purchaser, in writing (prior to the installation of the home) if the designated site does not meet the above mentioned requirements and give you recommendations to properly prepare the site. If this is not done, they are to be held accountable for any problems with your home related to improper site preparations."

TDHCA responds that this suggestion would constitute a substantive change to the previously posted proposed rules in that it would impose more onerous requirements on retailers and installers. The Advisory Commission and staff believe that the wording of the proposed site preparation notice is appropriate at this time.

Concerning the vapor barrier requirement, the following comments were made:

Many retailers and installers did not believe the vapor barrier is necessary in areas where the climate is semi-arid. One commenter said that the cost would be closer to \$100 per home, rather than \$33.60 per section. Another commenter stated that putting a vapor barrier over wet ground causes a mildew situation underneath the home and creates a place where insects, fire ants, and other pests can get under the house. If there is a water leak under the house, water will just stand in a puddle, breeding mosquitoes and causing odors. Another said the vapor barrier will tear when putting blocks underneath and moving axles and other materials. The commenter thinks this requirement is creating a problem that is going to be bad for the consumer. One commenter said a site that is well-drained does not need the vapor barrier because the water will not stand and moisture will not be a problem. There will be a problem if the site is not well-drained and it ponds water with a vapor barrier installed. On the other hand, another commenter wanted the vapor barrier to be taken into consideration for every site because of a concern that excessive moisture, particularly after a dry spell, will cause the house to shift. A member of the Advisory Commission commented that the commission addressed the issue because most manufacturers' instructions required the use of vapor barriers.

TDHCA responds that the Advisory Commission discussed this provision extensively, both in the Installation Subcommittee and as a group of the whole. In spite of initial disagreement, the

commission voted unanimously to support the inclusion of the vapor barrier in the generic installation requirements. According to many manufacturers, moisture under the home can be a problem regardless of whether the home is located in an arid or semi-arid location because the problem is caused by moisture percolating up through the soil rather than coming from rain or run-off. Nearly all manufacturers currently recommend the use of vapor barriers at all times.

Another commenter said the vapor barrier requirements will drive up skirting costs and it may cause some people not to skirt their home. Most of the skirting manufacturers are supplying fully vented panels, which equate to probably within the 10% range of ventilation underneath the house. With this level of ventilation, a vapor barrier would not be necessary. Another commenter said it is important to properly prepare the site and the drainage around the house, while another commenter, representing a manufacturer, recommended a vapor barrier when necessary, but suggested that it not be required for each home.

TDHCA responds that manufacturers caution about loss of warranty protection if homes are not installed properly, and they recommend the use of a vapor barrier. If the technology in skirting eliminates the need for a vapor barrier, the requirement should be revisited.

One commenter said the vapor barrier will be an added expense to the consumer, and another thought the cost would be close to \$100 per section. A manufacturer's engineer commented that they recommend some type of vapor barrier, especially when the home is skirted with vinyl skirting. A vapor barrier is not required if the ground under the house is properly drained and the crawl space is properly ventilated. The engineer states that there are some environments where the hot, dry nature of the climate makes the expense of installing a vapor barrier unnecessary. Another commenter believed it would be impossible to use a vapor barrier in wooded areas where the consumer couldn't afford to get a bulldozer in to clear all the stumps. There would be too many tears in the vapor barrier after running a truck over the plastic and pulling a house over it. The commenter said they thought the underside of manufactured homes was a vapor barrier.

A member of the Advisory Commission's Installation Subcommittee commented that you can put a vapor barrier over stumps eight inches high, that you can have tears up to 18 inches, and about 80% coverage is what the rules call for. Robert Thompson, chair of the Advisory Commission, described the debate surrounding the discussion of allowing 18 inch tears in the vapor barrier. He suggested that the industry take the document, put it in place, work with it, and get back together in a year or so to make changes that should be made.

TDHCA responds that according to the department's estimates based on the best information available, the cost per section would be approximately \$36.60. Retailers and installers are only required to install the vapor barrier if the retailers and installers provide or install the skirting. The department agrees with the Advisory Commission's recommendation that the vapor barrier requirement should be retained in the rules.

Concerning determining soil conditions, the following comments were made:

One commenter said he opposed the use of the pocket penetrometer because the soil is unpredictable and may have

sand for a foot down before hitting solid sandstone, so the penetrometer wouldn't give an accurate picture. Another commenter wanted to know whether the seven readings for the pocket penetrometer testing procedures should be taken within a square foot area or must a person take readings in seven different areas of one square foot. Further, he asked whether there is a violation if an installer or retailer uses the presumptive bearing capacities from a local building code, but the state inspector uses a pocket penetrometer to get a different reading.

TDHCA responds that the pocket penetrometer is just one of several alternative ways to determine the load bearing capacity of the soil. If the installer does not want to use it, he or she can use another of the listed methods. §80.54(d)(1)(A)(i) says "test a typical area," meaning that the installer should take an area that's typical of the site, dig down to undisturbed soil so that there's an area of one square foot for testing. Then take seven readings from this square foot area. If the installer has used one of the approved methods properly, there is no violation even if the result conflicts with the state inspector's reading from a pocket penetrometer.

Concerning load-bearing supports or devices, the following comments were made:

One commenter noted that there is a provision that states that load-bearing supports or devices shall be listed by an independent testing laboratory, nationally recognized inspection agency, or other nationally recognized organization. There is no definition for load-bearing supports or devices, although there is a definition for stabilizing components. He asked whether this conflicts with §80.62, which refers to approval of stabilizing devices (particularly in terms of base pads and piers). Another commenter, referring to §80.54(d)(6), asked if a wood shim can be placed on top of an 8x8x16 hollow concrete block (relating to the Pier Design).

TDHCA responds that §80.62(a) states that installers shall only use prefabricated or site built stabilizing components and systems approved by the department, specified by the home manufacturer's DAPIA approved installation instructions, or specified for one or more homes in a particular area by a Texas licensed engineer or architect. The definition of "stabilizing components" in §80.11(38) includes all components of the anchoring and support system such as piers, footings, and any other equipment which supports the manufactured home and secures it to the ground. These provisions can thus be read consistently with each other and with §80.54(d)(5)(C). Finally, a wood shim must be placed on a concrete or wood cap, and cannot be placed directly onto a hollow concrete block.

#### COMMENTS ON §80.55:

Concerning §80.55 relating to in-line anchors, a commenter questioned the accuracy of tests run showing that in-line anchors are stronger than ones that are bent to 15 degrees. Another commenter noted that §80.55(f)(6)(D) specifies that units less than 60 feet in box length requires at least two ties per end per section, but there is no provision for units more than 60 feet. He asked if the longer units only had to have one tie per end.

TDHCA responds that it has reviewed test results from several anchor pull tests and they all show that soil auger anchors installed in the near vertical position, not severely pre-tensioned, and without a stabilizer plate, will not provide the restraint

required by federal standards. As for longitudinal ties, TDHCA states that longitudinal ties are required for all Wind Zone II installations under §80.55(f)(6)(A), and although there is no rule that defines the number of longitudinal ties for a unit or 60 feet or more in length, they should have at a minimum two ties per end. Because the requirements for the longer units will depend on the size and design of the home, a more specific requirement has not been included.

A manufacturer commented that the blocking and anchoring standards are very specific as the rules are written and the engineering on those is quite substantial. The commenter said that according to their engineers, the blocking requirements are engineered at 300% of what is required to hold the home, according to their engineers, while the anchoring standards are at 150% of capacity, with no tolerances factored in. The commenter encouraged the department to recommend plus and minus tolerances for the spacing on the blocking, for the tie-downs, the amount of anchor in the ground, the spacing on those anchors, et cetera.

TDHCA responds that the generic standards are based on home manufacturers' specifications. The proposed rule §80.54(d)(5)(A) allows pier spacing to exceed tabulated values up to 30%, so long as the total pier count remains the same. There is a similar tolerance for anchor spacing in §80.55(d) and (e). Further, the anchor manufacturers provide any applicable tolerances in their anchor instructions.

A commenter noted that requiring installers to do electric, plumbing, and testing of connections makes the installer liable for service often beyond their experience. Should an installer hire a licensed contractor or specialized technician to perform these connections? The consumer will have to pay for the increased cost. Another commenter asked if multi-section connection standards apply to new and used homes, because it seems inappropriate on secondary installations whose age might preclude strict adherence to these generic standards. Likewise, another commenter wanted the rules to differentiate between new and used home requirements when plumbing has previously been installed. One commenter noted that there is a reference in the generic standards that an installer should install the plumbing connections, bring it to the single source according to the manufacturers' design or DAPIA design. If a manufacturer is out of business and the manufacturer's design or DAPIA design is not available, installers will have to use their best discretion with regard to installation of drain lines underneath the home to the source of the sewer connection.

TDHCA responds that with regard to connecting and testing electric and plumbing connections, carrying out these functions is critical to the proper set up of the home, but the proposed rules include detailed drawings to help. A licensed installer should have the expertise to perform these tasks without having to hire specialized technicians. For the time being, the multi-section connection standards apply to both new and used homes. There have not been any major changes to the Federal Manufactured Homes Construction and Safety Standards since 1994. Since new and late model used homes may have similar construction details, the generic installation requirements for new and used homes must be similar. The rules differentiate between new and used homes with respect to plumbing in §80.56. At the same time, however, the department recognizes that there may be instances where because of the age of the home some accommodation must be made, but these will be addressed on a case by case basis, with exceptions made when

common sense demands. If it appears that different standards need to be developed for older homes, this rule will be revisited.

COMMENTS ON §80.56 (Multi-Section Connection Standards):

A commenter suggested that testing of secondary homes is not feasible due to the fact that most home rule cities require the services of contractors licensed within their jurisdiction. Furthermore, the home installation must be completed before utilities are turned-on, thus creating a time lapse that would require a second trip to the home site.

TDHCA responds that testing would be an additional cost, but it is feasible. Since the gas line crossovers must be tested with air pressure (between 6 and 8 ounces per square inch of pressure), the home connection to a gas supply is not required. All electrical tests (except the operational tests) can be conducted without connection to electrical power. The proposed rules do not mention plumbing tests. For plumbing lines, all incomplete systems and multi-section crossover connections must be assembled and tested in accordance with the DAPIA approved instructions or the Federal Manufactured Home Construction and Safety Standards.

There were no comments on §§80.62 (Approval of Stabilizing Components and Systems), 80.63 (Other Materials and Methods for Manufactured Homes), and 80.64 (Procedures for Alterations).

COMMENTS ON §80.66 (Rebuilding or Repairing a "Salvaged" Manufactured Home):

One commenter stated that an additional cost of \$1,000 would be incurred in the rebuilding of a salvaged home.

TDHCA disputes the additional cost in complying with this section. Section 80.66 asks that the rebuilder provide initial information about the condition of the home and the extent of the rebuilding necessary, and then notify the department at certain times during the rebuilding process. When more than one home is built in a one month period, the rebuilder must provide a quality assurance manual describing the rebuilder's procedures. There is nothing in the rule that indicates that these reporting requirements would add \$1,000 to the cost of rebuilding a home.

This is the end of comments regarding Subchapter D, Standards and Requirements.

COMMENTS ON §80.119 (Installation Responsibilities):

One commenter opposed requiring retailers obtain an installers license in conjunction with renewing or obtaining a new retailers license. Several commented that they would like to see the installers held responsible for installation violations instead of the retailers. Echoing a concern of others that retailers often have to pay for mistakes of licensed installers they have hired, a commenter requested the rule be reworded to hold the retailer responsible for the installation only if the retailer hired an unlicensed installer. One person asked who is responsible for correcting a deviation that would not have been one at the time the home was initially installed.

In response to the concerns about retailer liability for installations, an advisory commission member commented that the rule was changed to make the subcontractor installer jointly and severally liable for the portion of the installation that the subcontractor performed. The installer will have to go out and correct the home, not the retailer.

TDHCA responds that retailers are required to obtain an installer's license because the law requires the retailer to give the installation warranty for a new home. Further, under the Manufactured Housing Standards Act, an installer is anyone, including a retailer or manufacturer, that contracts to perform or performs installation functions on manufactured housing. The rules are a recognition of the retailer's accountability for the proper installation of all new homes and other homes if the installation is part of the retail sales contract. The industry and the Advisory Commission have supported holding the retailers accountable for all new home installation and other installations included in the retail sales contract, but recognize, too, the responsibility of the installer to perform properly.

One commenter agrees with the rule change on the responsibility for the installation, but would like the department to hold licensed installers accountable. Another commenter said the retailer needs to be responsible. A commenter suggested notifying the installer of deviations to the installation first (before holding the retailer responsible), copying the retailer, because the installer is ultimately responsible. Then the retailer should only be ordered to correct the installation if the installer does not correct the deviations. Several commenters said installers should be notified along with the retailer when deviations are found so that they can send their qualified employees to correct the installation.

TDHCA responds that licensed installers are presently held accountable for installations, as outlined above. The department disagrees with the suggestion that the installer should first be ordered to make the corrections and only if the installer does not do so the retailer be ordered to do so. This would entail an unacceptable time lag for the consumer, whose house is improperly installed. The department agrees with the idea of notifying installers along with the retailer when deviations are found.

A commenter asked if the department can furnish computer specifications for forms that are provided by the department. Another commenter said they will have to hire an additional secretary to comply with the revised rule. Previously the rule required the retailer and installers to submit installation reports on a monthly basis, but now the rule states the installer will submit an installation inspection report within ten days of every installation.

TDHCA responds that forms can be downloaded from the TDHCA Web Page. Concerning the ten-day requirement, the department supports the recommendation of the Advisory Commission.

One commenter requested that the Department guarantee that the installation inspections will be done within 30 or 40 days. Another asked what was the "appropriate field office."

TDHCA responds that by law it must inspect 25% of home on a sample basis. Inspections will be done as quickly as possible with the inspection staff available. The location of the home determines which TDHCA field office gets the report. TDHCA will furnish license holders a list of field office addresses, phone numbers, and FAX numbers.

With respect to §80.119(g)(5), a commenter said he thought his home would be installed on a permanent foundation since it was being certified as part of his real estate. He later found that it was not on a permanent foundation, but is considered permanently affixed to real estate when certified. He

recommends deleting this section from the rules. In response, TMHA stated that the Certification Documentation form used in such a transaction has a statement at the bottom that says "We understand the State will not perform an installation inspection for verification of this certification." The provision was an attempt to eliminate unnecessary inspections and thus additional expense to consumers involved in real estate transactions.

TDHCA responds that according to industry representatives, FHA and VA do not feel that dual inspections and dual approvals are required. The existing rule has worked well over the years.

#### COMMENTS ON §80.121:

One commenter was of the opinion that an additional cost will be incurred by retailers because the new rules increase the amount of information that is required to be maintained in the sales files.

TDHCA responds that it supports the recommendation of the Advisory Commission.

#### COMMENT ON §80.130:

One commenter noted that the requirement to deliver the warranty at the time the retail installment sales contract is signed creates a hardship for the retailer. In many instances, the warranty is part of the consumer manual that is located in the home. If the sale falls through after the customer has signed, there will not be a consumer manual for the next customer that actually purchases the home. Manufacturers will have to make sure there are adequate supplies of warranty documents available.

TDHCA responds that this provision tracks §14(d) of the Manufactured Housing Standards Act, so there is no leeway for the rule. The department believes the retailers and manufacturers will be able to establish a process whereby retailers are provided adequate copies of manufacturers warranties in a timely manner.

#### COMMENT ON §80.132:

A commenter complained that rule requiring service or work orders to be received by the department within ten days after the expiration of the warranty order issued by the department will force the respondent to send them by certified mail. This is an additional cost factor because of the increased postage and increased labor to prepare for certified mail.

TDHCA responds that respondents are given at least 40 days to complete the necessary repairs, with further time if an extension is requested. There should be enough time to mail the orders by regular mail, if the respondent completes the warranty service within the allotted time given.

#### COMMENTS ON §80.124:

One commenter asked if they can use their computers to recreate the titling forms required by the department, and if they must use exactly the same format as the TDHCA.

TDHCA responds that the rules require that the department's forms be used. The forms can be retrieved from the department's web site.

The following is a restatement of the rules' factual bases:

TDHCA established a Manufactured Housing Citizens Advisory Commission in the winter of 1997 in order to review and suggest

changes to existing rules regulating manufactured housing. The Advisory Commission was composed of representatives from different sectors affected by the rules: consumers of new homes and used homes, retailers, manufacturers of homes and of anchors, and an attorney. After meeting for over nine months, the Advisory Commission presented their suggestions to department staff, which reviewed them and offered suggested changes. The Advisory Commission then met with department staff to reach agreement on the final draft of the rules. This final draft was presented to the TDHCA Board, which authorized its publication in the Texas Register. Comments were received in written form and at the public hearing on June 24, 1998. The following describes the reasons for the rules.

New §80.10 describes the historical record for standards adopted for manufactured housing in accordance with the Texas Manufactured Housing Standards Act (Act), Article 5221f, and clarifies the identity of the standards adopted.

New §80.11 concerns definitions related to manufactured housing. Definition sections previously existed in several locations throughout the repealed rules. To allow the reader a way to easily reference the definitions, the separate sections previously in the repealed rules have been combined into one section and alphabetized in Subchapter B named "Definitions."

New §80.20 concerns required fees to the department for services rendered for inspections, issuance of Texas Seals, licensing, educational instruction, training and administrative costs.

New §80.50 concerns wind zone regulations that require homes manufactured on or after September 1, 1997, to meet the U.S. Department of Housing and Urban Development standards for Wind Zone II in order to be installed in Wind Zone II. Homes constructed prior to September 1, 1997, will be allowed to be installed in Wind Zone I and II without restriction. The selling retailer of a home constructed on or after September 1, 1997 to Wind Zone I standards must give a written notice to the buyer that states the home was not designed nor constructed to withstand hurricane force winds, and is not permitted to be installed in Wind Zone II counties in Texas, and there may be restrictions in other states prohibiting installation in Wind Zone II or III areas. This rule reflects changes in the Manufactured Housing Standards Act effective September 1, 1997.

New §§80.51-80.56, 80.62-80.64, and 80.66 concern standards and requirements for installation of manufactured homes, stabilizing system requirements, procedures for retailer alterations, and rebuilding or repairing "salvaged" manufactured homes for purposes of issuance of a manufactured home document of title. The new rules clarify and organize installation inspection requirements, wind zone installation requirements, and stabilizing system requirements; ensure that homes are installed in a safe and proper manner for the general public and the consumers protection; enhance the durability of manufactured homes; and establish generic installation standards for use statewide.

New §§80.119-80.123, 80.125-80.128, 80.130-80.132, and 80.135, concern responsibilities for the installation of manufactured homes; requirements for correcting deviations to a manufactured home installation; responsibilities of the manufacturer, retailer, and installer; security, license, and advertising requirements; procedures for hearings and arbitrations; delivery of warranties; consumer complaint handling procedures; correction requirements pertaining to consumer complaints; and manufactured housing auctions. The new

rules explain various types of administrative actions related to licensing, and reference new and revised sections in the Act, Article 5221f. The new rules update procedures for handling consumer complaints to include the federal requirements and clarify the consumer complaint inspection process. New §§80.119 - 80.123 concern the requirements for installers, manufacturers, retailers, security, and licensing. These rules do the following: encourage use of knowledgeable installers, protect the general public, consumers, and license holders by allowing better detection of unauthorized and unlawful activities; effectively administer the Act by requiring up-to-date reports and installation manuals from the manufacturers; require the retailers to provide proof to the department that the consumers receive the required information; assure that license holders conform to security requirements; clarify licensing terminology and requirements; assure that manufactured homes are rebuilt according to standards; and protect the general public and consumers by ensuring review and analysis of pertinent documents before issuing a license. The new rule §80.128 concerning arbitration requirements establishes procedures to comply with the requirements in §13A(h) of the Act, Article 5221f. New §80.135 clarifies requirements for manufactured housing auctions to protect consumers and give homeowners authority to auction their own home.

New §80.180 concerns notice to the consumer of formaldehyde emissions in manufactured homes. The notice must be posted in the home as outlined in the Federal Manufactured Home Construction and Safety Standards. Retailers shall deliver a copy of the "Important Health Notice" prescribed by the U.S. Department of Housing and Urban Development to the consumer before the execution of any mutually binding sales agreement.

New §§80.202-80.208 concern the method and requirements in obtaining a title or filing a tax lien, and instructions regarding required reports from the manufacturer and retailer. The new rules do the following: clarify the requirements and procedures for issuance of a title; provide information that will assist license holders, consumers, and the general public in conforming with the requirements in the Act, Article 5221f; clarify the procedures for filing a lien; and assist the department in data entry of information.

The installation standards in §§80.50-80.63 and §80.119 will become effective 60 days after the date of publication of the notice as required by the Texas Manufactured Housing Standards Act, Article 5221f, §9(g). All other rules will become effective 20 days after filing as specified by Chapter 2001, Government Code.

The new section is adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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 August 20, 1998.

TRD-9813304

Larry Paul Manley

Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: September 9, 1998  
Proposal publication date: May 8, 1998  
For further information, please call: (512) 475-3726



## Subchapter B. Definitions

### 10 TAC §80.11

The new section is adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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.

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Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



## Subchapter C. Fee Structure

### 10 TAC §80.20

The new section is adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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.

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TRD-9813306

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: May 8, 1998

For further information, please call: (512) 475-3726



## Subchapter D. Standards and Requirements

### 10 TAC §§80.50–80.56, 80.62, 80.63, 80.64, 80.66

The new sections are adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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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TRD-9813307

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



### Subchapter E. General Requirements

#### **10 TAC §§80.119, 80.120–80.123, 80.125–80.128, 80.130–80.132, 80.135**

The new sections are adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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.

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

TRD-9813310

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Effective date: September 9, 1998

Proposal publication date: May 8, 1998

For further information, please call: (512) 475-3726



### Subchapter F. Consumer Notice Requirements

#### **10 TAC §80.180**

The new section is adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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.

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TRD-9813311

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3726



### Subchapter G. Titling

#### **10 TAC §§80.202–80.208**

The new sections are adopted under the authority of the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

No other statute, code, or article is affected by the new 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.

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

TRD-9813312

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: May 8, 1998

For further information, please call: (512) 475-3726



## **TITLE 13. CULTURAL RESOURCES**

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

#### **Chapter 1. Library Development**

##### **13 TAC §1.21**

The Texas State Library and Archives Commission adopts an amendment to 13 TAC §1.21, without change to the proposed text as published in April 3, 1998, issue of the *Texas Register* (23 TexReg 3402).

The amendment reflects the change in the federal administrative agency to the Institute of Museum and Library Services under new federal legislation, the Library Services and Technology Act. Under the Institute of Museum and Library Services, the requirement to submit a plan to the federal government has changed from every year to every five years. The Commission will no longer adopt by reference an annual plan that contains specific grant guidelines. It will adopt grant guidelines as separate rules and adopt a plan for library services by reference when required by the Institute of Museum and Library Services.

The purpose of the amendment is to adopt by reference the State Plan for the Library Services and Technology Act in Texas



FFY 1998-2002, and to qualify Texas for federal assistance to improve library services.

No comments were received concerning the adoption of the amendment

The amendment is adopted under Government Code §441.006, §441.009, and §441.0091, which provide the Commission with authority to govern the Texas State Library, adopt a state plan for library services, and adopt rules on various subjects.

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 August 17, 1998.

TRD-9813020  
Raymond Hitt  
Assistant State Librarian  
Texas State Library and Archives Commission  
Effective date: September 6, 1998  
Proposal publication date: April 3, 1998  
For further information, please call: (512) 463-5440



## Standards for Accreditation of a Major Resource System of Libraries in the Texas Library System

### 13 TAC §1.68

The Texas State Library and Archives Commission repeals §1.68, without change to the proposed repeal as published in June 5, 1998, issue of the *Texas Register* (23 TexReg 5873). The repealed §1.68 removes an outdated policy for library materials and equipment purchased with grant funds and brings the commission policy into compliance with statutory changes that require the commission to conform to the Uniform Grant Management Standards, 1 TAC §§5.141-5.167.

The new policy for library materials and equipment purchased with grant funds is found in the Uniform Grant Management Standards 1 TAC §§5.141-5.167 which will be adopted by the commission in §2.118. This policy has two distinctions from the repealed §1.68. First, Uniform Grant Management Standards sets the capitalization level for equipment at \$1,000 rather than \$300 as set in §1.68. Second, Uniform Grant Management Standards require that title to equipment purchased with grant funds be retained by the grant recipient, and that the grant recipient follow regulations about safeguarding and reporting the equipment. §1.68 required title to equipment purchased with grant funds be retained by the commission. Both of the distinctions between Uniform Grant Management Standards and §1.68 are effective retroactively. The repeal of §1.68 will lessen the amount of time taken to maintain and report equipment inventory, and the commission will no longer hold title to property that is categorized as equipment.

No comments were received concerning the repeal.

The repeal is adopted under the Government Code §441.006, §441.136, and §441.0091 which provides the Commission with authority to govern the Texas State Library and adopt rules necessary to the administration of the program of state grants.

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 August 17, 1998.

TRD-9813042  
Raymond Hitt  
Assistant State Librarian  
Texas State Library and Archives Commission  
Effective date: September 6, 1998  
Proposal publication date: June 5, 1998  
For further information, please call: (512) 463-5440



### 13 TAC §1.93, §1.101

The Texas State Library and Archives Commission repeals 13 TAC §1.93 and §1.101 without change to the proposed repeals as published in April 3, 1998, issue of the *Texas Register* (23 TexReg 3402). The repeals remove outdated policies for grants.

The repeal of §1.93 removes an outdated policy for grants to establish public libraries. The repeal of §1.101 removes an outdated policy and standards for grants to connect libraries to the Internet.

No comments were received concerning the adoption of the repeals.

The sections are adopted under Government Code §441.006 and §441.0091, which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

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 August 17, 1998.

TRD-9813021  
Raymond Hitt  
Assistant State Librarian  
Texas State Library and Archives Commission  
Effective date: September 6, 1998  
Proposal publication date: April 3, 1998  
For further information, please call: (512) 463-5440



## Subchapter F. System Advisory Council

### 13 TAC §1.121 and §1.122

The Texas State Library and Archives Commission repeals §1.121 and §1.122. The repealed rules are replaced with new procedures for resolving disputes and complaints in Chapter 2 General Policies and Procedures. The repealed rules were published in the April 17, 1998 issue of the *Texas Register* (23 TexReg 3784-3785). The repealed rules established different procedures depending on the subject matter of the dispute. A single procedure is adopted concurrently with this repeal to cover all areas of dispute with the exception of disciplinary actions against county librarians. Disputes involving the award of bids, grants, contracts, membership in the Texas Library System, and other subjects under commission authority will be re-

solved using these new procedures. The adopted procedures conform to General Services Commission procedures for resolution of procurement disputes as required by Senate Bill 1752, Government Code §2155.076.

No public comment was received regarding this repeal. The Library Systems Act Advisory Board reviewed and recommended the repeal.

The rules are repealed under the Government Code §441.006.

The adopted amendment affects Senate Bill 1752, §2156.005(c) and §2155.076.

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 August 18, 1998.

TRD-9813078

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: September 7, 1998

Proposal publication date: April 17, 1998

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



## Chapter 2. General Policies and Procedures

The Texas State Library and Archives Commission adopts new §2.1, which defines terms used in Chapter 2. New Subchapter C, Grant Policies, pertaining to grants policies is adopted with changes to the proposed text as published in May 8, 1998, issue of the *Texas Register* (23 TexReg 4484). Editorial changes to correct spelling and grammar errors are made in §2.112, §§2.120 - 2.125, §2.130, §§2.132 - 2.134, §2.150, §2.153 and §2.154 which are adopted with changes. Sections 2.1, 2.111, 2.113 - 2.119, 2.126 - 2.129, 2.131, 2.135, 2.151, 2.152, and 2.155 are adopted without changes to the proposed text as published in May 8, 1998, issue of the *Texas Register* (23 TexReg 4484) and will not be republished.

The new section §2.1 replaces §2.11 which is being repealed concurrently. Subchapter C, Grant Policies establishes Commission policy for administration of specific grants programs. The grant programs will assist communities to improve library services. The policy details the process for obtaining grants, the criteria on which grants will be awarded, and how the grants will be administered once awarded. New §2.1 defines the terms Commission, Library, Loan Period, Over-size Paper Copy, and State Archives. Sections 2.111-2.119, 2.120-2.125, 2.130-2.135, 2.150-2.155 set the general conditions and criteria for grant awards that maintain and foster cooperative library services with other communities, provide outreach services for populations with special needs, and provide interlibrary loan services. The new sections will assist communities to seek financial assistance from the commission and to carry out successful grant programs.

No comments were received concerning the adoption of the new sections.

### Subchapter A. Principles and Procedures of the Commission

### 13 TAC §2.1

The new section is adopted under the Government Code §441.006 and §441.091 which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects including grants.

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 August 20, 1998.

TRD-9813259

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: September 9, 1998

Proposal publication date: May 8, 1998

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



## Subchapter C. Grant Policies

### Division 1. General Grant Guidelines

#### 13 TAC §§2.111-2.119

The new sections are adopted under the Government Code §441.006 and §441.091 which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects including grants.

#### §2.112. *General Selection Criteria.*

(a) Grants shall be awarded based on guidelines that reflect applicable state and federal mandates. Selection criteria are designed to select applications that provide the best overall value to the state.

(b) The award criteria include:

(1) program quality as determined by a peer review process; and

(2) the cost of proposed service.

(c) The commission may consider additional factors in determining best value, including:

(1) financial ability to perform services;

(2) state and regional service needs and priorities;

(3) improved access for poorly served areas and populations;

(4) ability to continue services after grant period; and

(5) past performance and compliance.

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-9813260

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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## 2. Library Services and Technology Act, Library Cooperation Grants-Part A, Technology, Guidelines for Public Libraries

### 13 TAC §§2.120-2.125

The new sections are adopted under the Government Code §441.006 and §441.091 which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects including grants.

#### §2.120. *Goals and Purposes.*

(a) This grant program promotes access to learning and information resources in all types of libraries for individuals of all ages; and promotes library services that provide all users access to information through state, regional, national, and international electronic networks; and provides linkages among and between libraries.

(b) Programs may be in one of the following categories:

(1) Establish or enhance electronic linkages among or between libraries – to establish a new network or update the electronic technology in an existing one by providing better or enhanced access to library resources and materials in more than one system member public library or with multi-type libraries; or

(2) Encourage libraries in different areas, and encourage different types of libraries to establish consortia and share resources – to encourage public libraries to participate in public library consortia or participate in multi-type library consortia that include a public library (which is a member of the Texas Library System) and to share among themselves the technology-based resources of all libraries within the consortium.

#### §2.121. *Eligible Applicants.*

(a) Texas Library System member public libraries, Major Resource Systems, and regional library systems through their governing authority (city, county, or corporation) are eligible to apply for funds. These funds are awarded to public libraries but may be used with all types of libraries as defined in the Library Services and Technology Act (LSTA), P.L. 104-208, and that are members of a consortium as defined by the LSTA.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

#### §2.122. *Eligible Expenses.*

(a) This grant program will fund costs for staff, equipment, capital expenditures, materials, and professional services needed to:

(1) create a new, or enhance an existing, network of system member public libraries;

(2) create a multi-type library network that includes a system member public library;

(3) create linkages between system member public libraries and educational, social, or cultural information services;

(4) create linkages between system member public libraries separated by geographical barriers.

(b) This grant program will not fund the following costs:

(1) building construction or renovation;

(2) food, beverages, or gifts;

(3) equipment or technology not specifically needed to carry out the goals of the grant;

(4) transportation/travel for participants or non-grant funded personnel;

(5) programs to enhance service within existing library structures, e.g. branch libraries;

(6) dumb terminals;

(7) American Standard Code for Information Interchange (ASCII) connections; or

(8) databases currently offered or similar to ones offered by the Texas State Library and Archives Commission (i.e., a magazine index database may not be purchased since one is already provided by the Texas State Electronic Library).

#### §2.123. *Criteria for Award.*

The Library Services and Technology Act Advisory Council will score proposals on nine criteria. The maximum number of points for each category is as follows:

(1) Community Profile. (15 points) The applicant describes the greater community to be served by the grant. Identifies a service that might be used if it were available; and includes demographic statistics, library records, or surveys to support these statements. Attaches letters of cooperation showing their commitment to the project from agencies to be involved in the shared service. The applicant thoroughly describes services, programs, activities; describes the location where they will be offered; and explains how these services will attract shared library users.

(2) Shared Services. (15 points) The application should show details of the existing technology plan of the system member public library, Major Resources System, or regional library system and how the shared service is designed to mesh with technology purchased or to be purchased with Telecommunications Infrastructure Fund (TIF) grants, the service provided by Universal Service Fund Education Rate discounts, and House Bill 2128.

(3) Personnel. (5 points) List who will administer the funds. List which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(4) Timetable. (5 points) The applicant presents a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provides verification that facilities will be available, equipment and materials delivered; and explains how the staff will be hired and trained in time to carry out the services as planned.

(5) Objectives. (10 points) The applicant sets achievable, measurable outcomes; describes how the outcomes will demonstrate expanded library services; and presents a reasonable method to collect data.

(6) Reaching a Shared Target Area. (10 points) The applicant submits a plan for introducing the shared library services to targeted users; the plan uses a variety of communication techniques and includes verbal communication.

(7) Expenses Justified. (15 points) The applicant fully justifies the budget by describing how budgeted items will contribute to the shared services; quotes a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives.

(8) Adequacy of Resources. (15 points) The applicant describes the joint resources which will be used to support this expansion of services during the grant year; submits estimated costs for continuing the expanded services next year, with a plan for how the library or group of libraries will assume those costs in the future. A written commitment of future support from governing bodies is desirable, but not required.

(9) Evaluation. (10 points) The applicant presents a method to count users of the shared services as well as the effectiveness of the service. Provides a method to identify any new library users.

§2.124. *Grant Review and Award Process.*

(a) Commission staff will review each application for the following:

- (1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;
- (2) conformance to the federal and state regulations pertaining to grants;
- (3) inclusion of unallowable costs;
- (4) errors in arithmetic or cost calculations;
- (5) submission of all required forms; and
- (6) whether the application arrived at the Texas State Library and Archives Commission by the required date and time.

(b) Commission staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff comments will be sent to the LSTA Council with the applications for consideration by the council.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the council.

- (1) Applications with significant errors, omissions, or eligibility problems will not be rated.
- (2) Commission staff will be available to offer technical assistance to council members.

(d) Applications will be scored using the following process:

(1) The Library Services and Technology Act Advisory Council will review all complete and eligible grant applications forwarded to them by commission staff and complete a rating form for each. Each member will evaluate the proposal in relation to the specific requirements of the criteria and will mark a weighted rating, ranging from 0-15 points depending on the points assigned to each criterion.

(2) No council member who is associated with an applicant or with an application, or who stands to benefit directly from an application will evaluate that application. Any council member who feels unable to fairly evaluate a particular application may choose not to review that application.

(3) Council members will consider and assess the strengths and weaknesses of any proposed project only on the

basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the council.

(4) Council members may not discuss proposals with any applicant before the proposals are reviewed. Commission staff is available to provide technical assistance to council members. Commission staff will conduct all negotiations and communication with the applicants.

(5) Council members may offer a motion to set conditions for funding a given application, e.g., reduction of project budget, revision of project objectives. Such motions must be approved by a majority vote of council members present and eligible. The motion must include a statement of the reasons for setting such conditions. Council members who are ineligible to evaluate a given proposal will not vote on funding conditions.

(6) Council members who do not attend the meeting may mail the evaluation forms to the chairperson in care of the Library Development Division of the Texas State Library and Archives Commission. In order to be counted, the mailed forms must arrive before the meeting.

§2.125. *Decision Making Process.*

To be considered for funding by the Texas State Library and Archives Commission, an application must receive a minimum adjusted mean score of 50 points. Commission staff will tabulate the council's work using a method that eliminates the high and low score, called an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff will negotiate a reduced grant with the next ranked applicant.

(3) If the council recommends funding an application which, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The council will be informed of this situation prior to presentation to the commission. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting. If council is unable to produce a set of recommendations for funding, the staff will use the same evaluation procedures to develop recommendations to the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9813261  
Raymond Hitt  
Assistant State Librarian  
Texas State Library and Archives Commission

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Proposal publication date: May 8, 1998

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



### 3. Library Services and Technology Act, Library Cooperation Grants-Part B, Services, Guidelines for Public Libraries

### 13 TAC §§2.130–2.135

The new sections are adopted under the Government Code §441.006 and §441.091 which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects including grants.

#### §2.130. *Goals and Purposes.*

(a) This grant program promotes access to learning and information resources in all types of libraries for individuals of all ages; and promotes library services that provide all users access to information through state, regional, national, and international electronic networks; and provides linkages among and between libraries.

(b) The grant encourages libraries in different areas, and encourages different types of libraries to establish consortia and share resources –encourages public libraries to participate in public library consortia or participate in multi-type library consortia that include a public library (which is a member of the Texas Library System) and to share among themselves the services of all libraries within the consortium.

#### §2.132. *Eligible Expenses.*

(a) This grant program will fund costs for staff, equipment, capital expenditures, materials, and professional services needed to provide:

- (1) cooperative multi-library or multi-type library training programs ;
- (2) cooperative multi-library or multi-type library literacy volunteer training programs;
- (3) cooperative multi-library or multi-type library programs;
- (4) cooperative multi-library or multi-type library preservation projects.

(b) This grant program will not fund the following costs:

- (1) building construction or renovation;
- (2) food, beverages, or gifts;
- (3) equipment or technology not specifically needed to carry out the goals of the grant;
- (4) transportation/travel for participants or non-grant funded personnel; or
- (5) programs to enhance service within existing library structures, i.e. branch libraries.

#### §2.133. *Criteria for Award.*

The Library Services and Technology Act Advisory Council will score proposals on nine criteria. The maximum number of points for each category is as follows:

(1) Community Profile (15 points). The applicant describes the greater community to be served by the grant; identifies a service that might be used if it were available; includes demographic statistics, library records, or surveys to support these statements; and attaches letters of cooperation showing their commitment to the project from agencies to be involved in the shared service. The applicant thoroughly describes services, programs, activities; describes the location where they will be offered; and explains how these services will attract shared library users.

(2) Shared Services (15 points). The applicant describes thoroughly the shared services, programs, activities, and materials to

be purchased; describes locations where they will be offered; and explains how these services will attract shared library users.

(3) Personnel (5 points). List who will administer the funds. List which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(4) Timetable (5 points). The applicant presents a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provides verification that facilities will be available, equipment and materials delivered; and an explanation of how the staff will be hired and trained in time to carry out the services as planned.

(5) Objectives (10 points). The applicant sets achievable, measurable outcomes; describes how the outcomes will demonstrate expanded library services; and presents a reasonable method to collect data.

(6) Reaching a Shared Target Area (10 points). The applicant submits a plan for introducing the shared library services to targeted users; the plan uses a variety of communication techniques and includes verbal communication.

(7) Expenses Justified (15 points). The applicant fully justifies the budget by describing how budgeted items will contribute to the shared services; quotes a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives.

(8) Adequacy of Resources (15 points). The applicant describes the joint resources which will be used to support this expansion of services during the grant year; submits estimated costs for continuing the expanded services next year, with a plan for how the library or group of libraries will assume those costs in the future. A written commitment of future support from governing bodies is desirable, but not required.

(9) Evaluation (10 points). The applicant presents a method to count the users of the shared services as well as the effectiveness of the service. Applicant provides a method to identify any new library users.

#### §2.134. *Grant Review and Award Process.*

(a) Commission staff will review each application for the following:

- (1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;
- (2) conformance to the federal and state regulations pertaining to grants;
- (3) inclusion of unallowable costs;
- (4) errors in arithmetic or cost calculations;
- (5) submission of all required forms; and
- (6) whether the application arrived at the Texas State Library and Archives commission by the required date and time.

(b) Commission staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff comments will be sent to the LSTA Council with the applications for consideration by the council.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may

not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the council.

(1) Applications with significant errors, omissions, or eligibility problems will not be rated.

(2) Commission staff will be available to offer technical assistance to council members.

(d) Applications will be scored using the following process:

(1) The Library Services and Technology Act Advisory Council will review all complete and eligible grant applications forwarded to them by commission staff and complete a rating form for each. Each member will evaluate the proposal in relation to the specific requirements of the criteria and will mark a weighted rating, ranging from 0 - 15 points depending on the points assigned to each criterion.

(2) No council member who is associated with an applicant or with an application, or who stands to benefit directly from an application will evaluate that application. Any council member who feels unable to fairly evaluate a particular application may choose not to review that application.

(3) Council members will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the council.

(4) Council members may not discuss proposals with any applicant before the proposals are reviewed. Commission staff is available to provide technical assistance to council members. Commission staff will conduct all negotiations and communication with the applicants.

(5) Council members may offer a motion to set conditions for funding a given application, e.g., reduction of project budget, revision of project objectives. Such motions must be approved by a majority vote of council members present and eligible. The motion must include a statement of the reasons for setting such conditions. Council members who are ineligible to evaluate a given proposal will not vote on funding conditions.

(6) Council members who do not attend the meeting may mail the evaluation forms to the chairperson in care of the Library Development Division of the Texas State Library and Archives Commission. In order to be counted, the mailed forms must arrive before the meeting.

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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Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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



## 5. Library Services and Technology Act, Special Projects Grants, Guidelines for Public Libraries

### 13 TAC §§2.150–2.155

The new sections are adopted under the Government Code §441.006 and §441.091 which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects including grants.

#### §2.150. *Goals and Purposes.*

This grant program expands public library services to all members of the library's community. It enables libraries to develop local programs for populations with special needs. Programs may be in one of the following categories:

(1) Services to People with Limited English Proficiency – To improve access to library resources and services to individuals not born in the United States or whose native language is not English and therefore have difficulty speaking, reading, writing, or understanding the English language.

(2) Services to Older Adults –To provide services, programs, and library materials for persons who are over 60 years of age.

(3) Community Information and Referral Centers –To provide patrons with specific information of a utilitarian or practical nature on groups or organizations in the library's service area or to refer patrons to an organization, agency, or individual capable of providing the information.

(4) Literacy Programs –To provide literacy programs for adults, school dropouts, and persons incarcerated in correctional facilities, in cooperation with other agencies and organizations, if appropriate.

(5) Services for People with Disabilities –To provide library services to individuals who have physical, mental, visual, or hearing disabilities.

(6) Intergenerational Library Programs –To develop intergenerational library programs that will match older adult volunteers with libraries interested in developing after school literacy and reading skills programs for unsupervised school children during after school hours.

(7) Child Care Center Library Programs –To provide library services and programs to child care providers or child care centers, which are licensed or certified by the State, or otherwise meet the requirements of State law.

(8) Services for the Disadvantaged in Urban and Rural Areas – To make public library services accessible to disadvantaged individuals who are unable to benefit from public library services regularly available to the general public. Disadvantages include, but are not restricted to, distance, socio-economic or educational deprivation, or cultural isolation from the general community.

#### §2.153. *Criteria for Award.*

The Library Services and Technology Act Advisory Council will score proposals on nine criteria. The maximum number of points for each category is as follows:

(1) Community Profile (15 points). The applicant describes the community which the library serves and describes the segments of that community which it is not serving; identifies a service that the non-users might use if it were available; and includes demographic statistics, library records, or surveys to support these statements.

(2) New Services (15 points). The applicant describes thoroughly services, programs, activities, and material to be pur-

chased; describes the location where they will be offered; and explains how these services will attract new library users.

(3) Personnel (5 points). The applicant describes who will administer the grant funds and who will provide the services; how much time they will spend on their assigned duties; and how their qualifications relate to their job duties. Full job descriptions are required for new hires.

(4) Timetable (5 points). The applicant presents a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provides verification that facilities will be available, equipment and materials delivered; and explains how the staff will be hired and trained in time to carry out the services as planned.

(5) Objectives (10 points). The applicant sets achievable, measurable outcomes; describes how the outcomes will demonstrate expanded library services; and presents a reasonable method to collect data.

(6) Reaching the Hard-to-Reach (10 points). The applicant submits a plan for introducing the new library services to traditionally hard-to-reach nonusers; the plan uses a variety of communication techniques, and includes verbal communication.

(7) Expenses Justified (15 points). The applicant fully justifies the budget by describing how budget items will contribute to the new services; quotes a source for the stated cost (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives.

(8) Adequacy of Resources (15 points). The applicant describes the local resources which will be used to support this expansion of services during the grant year; submits estimated costs for continuing the expanded services next year, with a plan for how the library will assume those costs in the future. A written commitment of future support from the governing body is desirable, but not required.

(9) Evaluation (10 points). The applicant presents a method to count how many of the users of the new services are former nonusers. If the project proposes to educate individuals, the applicant describes educational outcomes and how they will be measured.

§2.154. *Grant Review and Award Process.*

(a) Commission staff will screen each application for the following:

- (1) legal eligibility of the institution to participate in the grant program and appropriate authorizing signatures;
- (2) conformance to the federal and state regulations pertaining to grants;
- (3) inclusion of unallowable costs;
- (4) errors in arithmetic or cost calculations;
- (5) submission of all required forms; and
- (6) whether the application arrived at the Texas State Library and Archives Commission by the required date and time.

(b) Commission staff will raise issues and questions regarding the needs, methods, staffing, and costs of the applications. Staff comments will be sent to the LSTA Council with the applications for consideration by the council.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may

not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the Council.

(1) Applications with significant errors, omissions, or eligibility problems will not be rated.

(2) Commission staff will be available to offer technical assistance to council members.

(d) Applications will be scored using the following process:

(1) The Library Services and Technology Act Advisory Council will review all complete and eligible grant applications forwarded to them by commission staff and complete a rating form for each. Each member will evaluate the proposal in relation to the specific requirements of the criteria and will mark a weighted rating, ranging from 0-15 points depending on the points assigned to each criterion.

(2) No council member who is associated with an applicant or with an application, or who stands to benefit directly from an application will evaluate that application. Any council member who feels unable to fairly evaluate a particular application may choose not to review that application.

(3) Council members will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the council.

(4) Council members may not discuss proposals with any applicant before the proposals are reviewed. Commission staff is available to provide technical assistance to council members. Commission staff will conduct all negotiations and communication with the applicants.

(5) Council members may offer a motion to set conditions for funding a given application, e.g., reduction of project budget, revision of project objectives. Such motions must be approved by a majority vote of council members present and eligible. The motion must include a statement of the reasons for setting such conditions. Council members who are ineligible to evaluate a given proposal will not vote on funding conditions.

(6) Council members who do not attend the meeting may mail the evaluation forms to the chairperson in care of the Library Development Division of the Texas State Library and Archives Commission. In order to be counted, the mailed forms must arrive before the meeting.

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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Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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



Subchapter A. Principles and Procedures of the Commission

### 13 TAC §2.11

The Texas State Library and Archives Commission repeals §2.11, without change to the proposed repeal as published in May 8, 1998, issue of the *Texas Register* (23 TexReg 4484).

The repealed section contained definitions for Chapter 2 General Policies and Procedures. A new §2.1 that will contain the definitions used in Chapter 2 will be adopted.

The repeal will correct a mistake in the numbers assigned to the section for definitions in Chapter 2.

No comments were received concerning the repeal.

The repeal is adopted under the Government Code §441.006 which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

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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Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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### 13 TAC §2.52

The Texas State Library and Archives Commission adopts an amendment to §2.52, concerning the exhibition of state archives with changes to the proposed text as published in the May 22, 1998 issue of the *Texas Register* (23 TexReg 5291).

The rule will allow the commission to expand the loan of archival materials, historical items, and artifacts and to specify conditions under which those items will be loaned for public exhibition.

Archival documents may deteriorate when exposed to certain levels of temperature, humidity, and light, among other factors. The amendment establishes standards for those factors, the compliance with which will reasonably ensure the stability of the archival materials. Due to their unique nature and historical value archival materials must also be protected against theft or damage during transit and while on public exhibition. Specific requirements are incorporated in the amendment, the compliance with which should reasonably assure the safety and security of the archival materials during their loan and exhibition.

No public comments were received regarding the adoption of the amendment. The commission adopted several editorial changes to the published text. In the first sentence of §2.52(d)(1)(A) the word "should" was changed to "must" in order to reduce any ambiguity as to what was required. In §2.52(d)(2)(C) an error in the published temperature of 770 degrees was corrected to 70 degrees. In the second sentence of §2.52(d)(3)(B) the word "affect" was corrected to read "effect."

The amendment is adopted under Government Code §441.190 and §441.006 which provide the Texas State Library and Archives Commission with the authority to govern the State

Library and Archives and adopt rules establishing standards and procedures for the protection, maintenance, and storage of archival state records.

§2.52. *Customer Service Policies.*

(a)-(c) (No change)

(d) **Exhibition of State Archives.** Archival material, historical items, artifacts, or museum pieces will be loaned for public exhibition only under conditions specified in paragraphs (1) - (8) of this subsection. Requests for loan of the original Texas Declaration of Independence, original copies of the Constitutions of Texas, Treaties of the Republic of Texas, and certain other highly significant documents will require the formal approval of the Commission. Microfilm reproductions, preservation photocopies, other photographic reproductions, or digital images will be created prior to archival materials being lent for exhibition.

(1) **General Requirements.**

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

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

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

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

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

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

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

(2) **Security and Environmental Conditions.**

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

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



(C) Temperature and humidity levels must be monitored and controlled. A temperature of 70 ± 5 degrees and relative humidity of 50% ± 5% without rapid fluctuations must be maintained in the storage, preparation, and exhibition areas. Before approving a loan and while items are on loan, the Director and Librarian may request copies of temperature and humidity readings from the borrower to verify that these requirements can and are being met.

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

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

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

(3) Lighting Conditions.

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

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

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

(4) Handling and Installation.

(A) Original archival materials, historical items, or artifacts may be handled and installed only by a curator, registrar, preparator, or conservator under contract to or on the staff of the borrower.

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

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

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

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

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

(5) Inspections.

(A) A commission staff member may inspect the exhibition area before the loan is approved. If, after a commission

staff inspection, in the opinion of the Director and Librarian any loan requirement cannot be met, the loan will not be made.

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

(6) Packing and Transportation.

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

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

(7) Insurance.

(8) Publicity and Credit.

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

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

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

(e)-(h) (No change)

This agency hereby certifies that the 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 August 17, 1998.

TRD-9813063

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: September 6, 1998

Proposal publication date: May 22, 1998

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

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**13 TAC §§2.53–2.55**

The Texas State Library and Archives Commission adopts amendments to §2.53 and new §§2.54-2.55. The amendment to §2.53 and new §2.54 are adopted without changes and the text will not be published. New §2.55 is adopted with changes to the proposed text as published in the April 17, 1998 *Texas Register* (23 TexReg 3784-3785).

A single procedure is adopted to manage the resolution of all disputes. The adopted procedures cover all areas of operations of the commission with the exception of disciplinary actions against county librarians under Government Code §§441.007 - 441.0074. Procedures concerning certification of county librarians will be proposed at another time. The adopted procedures will conform to General Services Commission procedures for resolution of procurement disputes as required by Senate Bill Government Code §2155.076. This adoption is made con-

currently with the repeal of existing §§1.121-1.122, which the adopted rules replace and unify into one procedure.

No public comment was received regarding these amendments. The Library Systems Act Advisory Board reviewed and recommended the adoption. The commission did make several technical and editorial corrections to §2.55. The phrase "and how to respond to any appeal which is filed" was added to the last sentence in subsection (f) to clarify the content of the director and librarian's notice to protesting and interested parties. To provide more flexibility in the deadline for interested parties to respond to a determination of an appeal, subsection (j) was replaced with the following text: "an interested party may file a response to an appeal of the determination of the Director and Librarian no later than 15 days after the appeal is mailed or delivered. The chair of the commission has the discretion to allow a response filed more than 15 days after the appeal of the determination by the Director and Librarian if the interested party shows good cause for the late filing or if the response raises an issue significant the general policies or procedures of the commission." In subsection (m) the phrase "to reverse" was inserted to read as follows: "Failing a majority vote of the commission to reverse, the Director and Librarian's decision is upheld."

The amendment is adopted under the Government Code §441.006.

The adopted amendment and new sections affect Senate Bill 1752, Texas Government Code §2156.005(c) and §2155.076, and Texas Government Code, Chapter 441, Subchapters A, F, G, H, I, J, and L, and Local Government Code Title 6, Subtitle C, and Human Resources Code, Chapter 91, Subchapter E.

#### §2.55. *Protest Procedure.*

(a) An aggrieved person who is not satisfied with a decision, procedure, or service received from the staff of the Texas State Library and Archives Commission or who is an actual or prospective bidder, grantee, or contractor aggrieved in connection with a solicitation, evaluation, or award may file a protest with the Director and Librarian in accordance with this rule.

(b) A protest must be submitted to the Director and Librarian within 21 days after the person knows or should have known of the matter which is protested. The Director and Librarian has the discretion to allow a protest filed after 21 days if the protestant shows good cause for the late filing or if the protest raises an issue significant to the general policies and procedures of the commission.

(c) The protestant shall mail or deliver a copy of the protest to all interested persons. The Director and Librarian will furnish a list of interested persons to a protestant. For protests of a competitive selection (bid, contract, or grant), interested persons shall include all persons who have submitted a bid, proposal, or application.

(d) A protest must be in writing and identified as a protest under Commission rule 2.55, and contain the following:

- (1) a description of the protestant's interest in the matter;
- (2) the issue(s) to be resolved and remedy(s) requested;
- (3) the protestant's argument supporting the protest, including a statement of relevant facts and applicable law, specifying the statutes, rules, or other legal authority alleged to have been violated;
- (4) the protestant's affirmation that facts set forth in the protest are true; and

(5) a certification that a copy of the protest has been mailed or delivered to all interested persons.

(e) Upon receipt of a protest conforming to the requirements of this section, the commission shall not proceed with the solicitation, award, or contract until the protest is resolved, unless the Director and Librarian makes a written determination that delay would harm the substantial interests of the state.

(f) The Director and Librarian has the authority to decide, settle, or resolve the protest and will make a written determination. The Director and Librarian may solicit written responses to the protest from other parties. The Director and Librarian shall inform the protesting party and other interested parties by letter of his determination, how to appeal the determination to the commission, and how to respond to any appeal which is filed.

(g) An interested party may appeal the determination of the Director and Librarian. An appeal must be in writing and conform to paragraphs (1)-(3) of this subsection:

(1) the appeal must be received in the office of the Director and Librarian no later than 15 days after the date the determination is mailed to interested parties;

(2) a copy of the appeal must be mailed or delivered by the appealing party to all interested parties and contain a certification of mailing or delivery;

(3) the appealing party must state whether or not an opportunity is requested to make an oral presentation to the commission in open meeting.

(h) The Director and Librarian shall refer the matter to the commission for their consideration at an open meeting.

(i) The chair of the commission has the discretion to allow an appeal filed more than 15 days after the Director and Librarian's determination if the appealing party shows good cause for the late filing or if the appeal raises an issue significant to the general policies or procedures of the commission.

(j) An interested party may file a response to an appeal of the determination of the Director and Librarian no later than 15 days after the appeal is mailed or delivered. The chair of the commission has the discretion to allow a response filed more than 15 days after the appeal of the determination by the Director and Librarian if the interested party shows good cause for the late filing or if the response raises an issue significant to the general policies or procedures of the commission

(k) Copies of the appeal and responses of interested parties, if any, shall be mailed to the commission by the Director and Librarian.

(l) The chair of the commission has the discretion to decide whether or not a request for oral presentations will be granted and will set the order and amount of time for oral presentations that are allowed. The chair also has the discretion to decide whether presentations and written documents presented by Commission staff and interested parties will be allowed.

(m) The commission will determine properly filed appeals and make its decision in open meeting. The commission shall vote to uphold or reverse the decision of the Director and Librarian. Failing a majority vote of the commission to reverse, the Director and Librarian's decision is upheld. The commission's decision is final and not subject to judicial review under the statutes governing the commission.

(n) A decision issued either by the commission in open meeting or in writing by the Director and Librarian shall be the final administrative action of the commission.

(o) Documentation concerning a protest of a competitive selection is part of the commission's records series for that selection and is retained in accordance with the commission's approved records retention schedule.

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 August 18, 1998.

TRD-9813079

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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



## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Subchapter B. Records and Reports

###### 16 TAC §§23.11-23.14

The Public Utility Commission of Texas (PUC) adopts the repeals of §§23.11 relating to General Reports; 23.12 relating to Financial Records and Reports; 23.13 relating to Statistical Reports; and 23.14 relating to Maintenance and Location of Records, with no changes to the proposed text as published in the May 15, 1998 *Texas Register* (23 TexReg 4722). The repeals are necessary to eliminate duplicative rules. The commission has adopted new §§25.71 - 25.83, 25.89, and 25.100 in Chapter 25, Subchapter D, relating to Records, Reports, and Other Required Information; and §§26.71 - 26.82, 26.87, 26.98, and 26.100 in Chapter 26, Subchapter D, relating to Records, Reports, and Other Required Information to replace §§23.11 - 23.14. These repeals are adopted under Project Number 19121.

The commission received no comments on the proposed repeals.

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

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

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 August 19, 1998.

TRD-9813196

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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Proposal publication date: May 15, 1998

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



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

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

#### 16 TAC §§25.71-25.83, 25.89, 25.100

The Public Utility Commission of Texas (PUC) adopts new §§25.71, relating to General Procedures, Requirements and Penalties; 25.72 relating to Uniform System of Accounts; 25.73 relating to Financial and Operating Reports; 25.74 relating to Reports on Sale of Property and Mergers; 25.75 relating to Reports on Sale of 50% or More of Stock; 25.76 relating to Gross Receipts Assessment Report; 25.77 relating to Payments, Compensation, and Other Expenditures; 25.78 relating to State Agency Utility Account Information; 25.79 relating to Equal Opportunity Reports; 25.80 relating to Annual Report on Historically Underutilized Businesses; 25.81 relating to Service Quality Reports; 25.82 relating to Fuel Cost and Use Information; 25.83 relating to Construction Reports; 25.89 relating to Report of Loads and Resources; and 25.100 relating to Other Records, Reports, and Information that May be Required with changes to the proposed text as published in the May 15, 1998 *Texas Register* (23 TexReg 4727). The new sections are adopted under Project Number 19121. These new sections will replace §§23.11 relating to General Reports; 23.12 relating to Financial Records and Reports; 23.13 relating to Statistical Reports; and 23.14 relating to Maintenance and Location of Records as they apply to the electric service providers. The new sections ensure that the commission is able to adequately monitor the activities of electric utilities for compliance with the Public Utility Regulatory Act, Texas Utilities Code, §§11.001 - 63.063, other state statutes and/or federal requirements, and to assure the availability of safe, reliable and high quality electric service at just and reasonable rates. These sections provide rules that clarify commission procedures and more accurately reflect current statutes.

The Appropriation Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) re-

organize 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 25 has been established for all commission substantive rules applicable to electric service providers.

The commission published notice of its intention to review §§23.11 - 23.14 in the May 15, 1998 issue of the *Texas Register* (23 TexReg 4935). In the notice of intention to review the commission requested specific comments on the Section 167 requirement regarding whether the reason for adopting §§23.11 - 23.14 continues to exist in adopting the corresponding sections in Chapter 25. The commission received no comments regarding the Section 167 requirement and finds that the reason for adopting §§23.11 - 23.14 continues to exist in adopting these new sections.

The commission received comments on the proposed sections from Central and South West Texas Electric Utility Operating Companies (CSW), and Southwestern Public Service Company (SPS).

*Section 25.73(b) regarding annual earnings report:*

CSW comments that Supplemental Schedule II-1 in the annual earnings report instructions requires the reporting of totals for certain types of expenses, including advertising, contributions, etc. on May 15 of each year. Proposed §25.77 of this title (relating to Payments, Compensation, and Other Expenditures) requires the same type of information (detailed by payee) to be filed in a separate annual report by June 1 of each year. CSW suggests that during this review of agency rules, the commission take this opportunity to eliminate this duplication of information by deleting Supplemental Schedule II-1 from the annual earnings report.

The commission declines to make the change suggested by CSW. Schedule II-1 contains a summary of expenditures made on items such as advertising, advocacy, and charitable contributions, which are either excluded from inclusion in rates, or have limitations under the law. The information is used to determine whether adjustments need to be made to the reported earnings in performing the earnings monitoring review. The information is not entirely duplicative of the information provided under §25.77 of this title because it gives aggregated data by type of expenditure rather than individual transaction amounts. The §25.77 report provides more detailed information which for the larger utilities, cannot feasibly be combined into the earnings report. This summary information is not considered to be burdensome to provide, since it is already prepared by the utility.

*Section 25.77 relating to Payments, Compensation, and Other Expenditures:*

The commission requested specific comments concerning the effect on the public interest of raising the threshold amount for reporting of information in proposed §25.77 from \$250 to \$500. CSW comments that the commission must establish a balance between examination of minute detail and observing general trends within companies and the industry, and believes this change will have no impact upon the public interest.

The commission adopts the \$500 threshold for reporting information relating to payments, compensation, and other expenditures.

*Section 25.80 relating to Annual Report on Historically Under-utilized Businesses:*

The commission proposed language requiring electric utilities with more than 1,000 customers in a state other than Texas, or which purchase more than 10% of its goods and services (other than fuel, purchased power, and wheeling) from vendors in a state other than Texas, to report Texas data separately from data for other states. SPS comments that some vendors may have headquarters in Texas but the entity doing business with SPS may actually be located in another state. Some vendors may have multi-state locations and may show up twice in the report. SPS request clarification of what is intended to be reported as "Texas data" to assist in determining which Texas vendors actually need to be reported separately from other states.

In response to SPS's request for clarification, the commission modifies §25.80(b)(5) by adding language to clarify what needs to be reported as Texas data and who is considered a Texas vendor.

*Other clarifying changes made by the commission.*

*Section 25.71(f)(8) regarding due dates of reports:*

Southwestern Bell Telephone Company (SWBT) filed comments on proposed new §26.71(f)(8) concerning due dates of reports as it relates to the telecommunications industry. Section 26.71(f)(8) corresponds to §25.71(f)(8) as it relates to the electric industry. SWBT states that the State Comptrollers' office requires the annual Gross Receipts Assessment Report to be filed by August 15 of each year for the previous July 1 through June 30 reporting period. Therefore this report could not be filed with the commission by June 1 of each year.

Consistent with SWBT's comments, §26.71(f)(8) and §25.71(f)(8) have been modified to require the Gross Receipts Assessment Report to be filed by August 15 of each year.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent, i.e., the commission has changed the word "contains" to the word "list" in §26.100 (implied (a)); and corrected the form of citation to statute in §25.78(b)(2).

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

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

*§25.71. General Procedures, Requirements and Penalties.*

(a) Who shall file. The record keeping, reporting, and filing requirements listed in this subchapter shall apply to all electric utilities operating in the State of Texas, excluding municipally owned utilities, unless otherwise specified. Moreover, the provisions of this subchapter are applicable to all services provided by such carriers.

(b) Initial reporting. Unless otherwise specified in a section of this subchapter, periodic reporting shall commence as follows:

(1) Quarterly reporting. For all electric utilities and other persons required to file records, reports and other required information under this chapter, who are not already filing quarterly

with the commission as of the effective date of this section, reporting shall begin with an initial filing for the first fiscal quarter for which information is available.

(2) Annual Reporting. For all electric utilities and other persons required to file records, reports and other required information under this chapter, who are not already filing annually with the commission as of the effective date of this section, reporting shall begin with an initial filing for the most recent fiscal year ending on or prior to April 30 of the first year the record, report or other required information must be filed with the commission.

(c) Maintenance and location of records. All records, books, accounts, or memoranda required of an electric utility, as defined in the Public Utility Regulatory Act, §31.002(1) may be kept outside the State of Texas so long as those records, books, accounts, or memoranda are returned to the state for any inspection by the commission that is authorized by the Public Utility Regulatory Act.

(d) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the electric utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the electric utility's operation.

(e) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any electric utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(f) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter.

(1) Monthly reports: 45 days after the end of the reported period.

(2) Quarterly reports other than shareholder reports: 45 days after the end of the reported period.

(3) Semi-annual reports: 45 days after the end of the reported period.

(4) Annual earnings report: May 15 of each year.

(5) Shareholder annual reports: seven days from the date of mailing the same to shareholders.

(6) Securities and Exchange Commission Filings: 15 days from the initial filing date with the Securities and Exchange Commission.

(7) Special or additional reports: as may be prescribed by the commission.

(8) Annual reports required by §25.76 of this title (relating to Gross Receipts Assessment Report) shall be due August 15 of each year and shall reflect transactions for the previous July 1 through June 30 reporting period.

(9) Annual reports required by §25.77 of this title (relating to Payments, Compensation, and Other Expenditures) shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.

(g) Special and additional reports. Each electric utility, including municipally owned utilities, shall report on forms prescribed

by the commission special and additional information as requested which relates to the operation of the business of the electric utility.

(h) Penalty for refusal to file on time. In addition to penalties prescribed by law, and §22.246 of the title (relating to Administrative Penalties) the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

#### §25.72. Uniform System of Accounts.

(a) Every electric utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of electric utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

(b) Classification. For the purposes of accounting and reporting to the commission, each electric utility shall be classified as follows:

(1) Major: electric utilities that had in each of the last three consecutive years sales or transmission service that exceeded any one or more of the following:

(A) one million megawatt-hours of total sales;

(B) 100 megawatt-hours of sales for resale;

(C) 500 megawatt-hours of gross interchange out; or

(D) 500 megawatt-hours of wheeling for others (deliveries plus losses).

(2) Nonmajor: electric utilities that are not classified as "major" as defined in paragraph (1) of this subsection.

(c) System of accounts. For the purpose of accounting and reporting to the commission, each electric utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(1) Major: uniform system of accounts as adopted and amended by the Federal Energy Regulatory Commission for major electric utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(2) Nonmajor: uniform system of accounts as adopted and amended by the Federal Energy Regulatory Commission for nonmajor electric utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(d) Other system of accounts. When a utility has adopted a uniform system of accounts as may be required by a state or federal agency other than those previously mentioned in this section (e.g. United States Department of Agriculture - Rural Utilities Service), that system of accounts may be adopted by the electric utility after notification to the commission.

(e) Merchandise accounting. Each electric utility shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

(f) Accounting period. Each electric utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the electric utility.

(g) Rules related to capitalization of construction costs. Each electric utility shall accrue allowance for funds used during construction on construction work in progress to the extent not

included in rate base. In the event construction work in progress is included in rate base pursuant to the rules in §23.21(c)(2)(D) of this title (relating to Cost of Service), capitalization of allowance for funds used during construction for electric utilities is allowed.

§25.73. *Financial and Operating Reports.*

(a) Annual reports.

(1) Each major electric utility shall file with the commission the same annual report required by the Federal Energy Regulatory Commission or United States Department of Agriculture - Rural Utilities Service. Such annual reports shall be filed with the commission on the same dates as required to be filed by the Federal Energy Regulatory Commission or United States Department of Agriculture - Rural Utilities Service, whichever is applicable. Major electric utilities which are not required to file such reports shall file with the commission an annual report on the form prescribed by the Federal Energy Regulatory Commission.

(2) Each nonmajor electric utility shall file with the commission the same annual report as is required of such electric utility by the Federal Energy Regulatory Commission or United States Department of Agriculture - Rural Utilities Service. Such annual reports shall be filed with the commission on the same dates as required to be filed by the Federal Energy Regulatory Commission or United States Department of Agriculture Rural Utilities Service, whichever is applicable.

(3) Each electric utility holding company subject to annual reporting to the Securities and Exchange Commission and each electric utility shall file with the commission three copies of its annual report to shareholders, customers, or members. Unless included in the annual report to shareholders, customers, or members, each electric utility shall file concurrently with the filing of such report three copies of any audited financial statements that may have been prepared on its behalf.

(b) Annual earnings report. Each electric utility shall file with the commission, on commission prescribed forms, an earnings report providing the information required to enable the commission to properly monitor electric utilities within the state.

(1) Each electric utility shall report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each electric utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than the date prescribed in §25.71(f)(4) of this title (relating to General Procedures, Requirements and Penalties).

(3) On the due date of the annual earnings report, each electric utility with a rate proceeding pending before the commission, pursuant to the Public Utility Regulatory Act, Chapter 36, in which a rate filing package is required, may submit an abbreviated earnings report. Specifications for the abbreviated filing are included in the General Filing Instructions for the annual earnings report.

(c) Securities and Exchange Commission reports. Each electric utility and electric utility holding company subject to reporting requirements of the Securities and Exchange Commission shall file three copies of each required report with the commission. Three copies of each such report including 10-Ks, 10-Qs, 8-Ks, Annual Reports, and Registration Statements filed with the Securities and Exchange Commission shall be submitted to the commission no later than 15 days from the initial filing date with the Securities and Exchange Commission.

(d) Duplicate information. An electric utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

§25.74. *Reports on Sale of Property and Mergers.*

(a) An electric utility shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of \$100,000 unless the electric utility reports such transaction to the commission while pending or within 30 days after closing.

(b) An electric utility shall not merge or consolidate with another electric utility or public utility operating in the State of Texas unless the electric utility reports such transaction to the commission while pending or within 30 days after closing.

(c) Electric utilities shall not purchase voting stock in another electric utility or public utility doing business in the State of Texas, unless the electric utility reports such purchase to the commission while pending or within 30 days after closing.

(d) Electric utilities shall not loan money, stocks, bonds, notes or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the electric utility unless the electric utility reports such transaction to the commission while pending or within 30 days after closing. A properly filed tariff change with respect to energy conservation loans available to customers, who may or may not be shareholders as described in this subsection, will be considered adequate reporting to the commission.

§25.75. *Reports on Sale of 50% or more of Stock.*

All transactions involving the sale of 50% or more of the stock of an electric utility shall be reported to the commission while pending or within 30 days after closing.

§25.76. *Gross Receipts Assessment Report.*

All electric utilities subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment as required by the Public Utility Regulatory Act on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Chapter 16, Subchapter A.

§25.77. *Payments, Compensation, and Other Expenditures.*

An annual report shall be filed with the commission providing information for each of the following classes of payments, compensation (other than salary or wages subject to the withholding of federal income tax) and expenditures made relating to matters in Texas, and detailing (by payee) each expenditure (and for the purposes of this section any series of expenditures) made to a single payee exceeding \$500 for:

- (1) business gifts and entertainment;
- (2) institutional, consumption-inducing, and other advertising expenses;
- (3) public relations expenses;
- (4) legislative matters, including advocacy before any legislative body;
- (5) representation before any governmental agency or body, including municipalities;

(6) legal expenses not accounted for in other categories of this subsection;

(7) charitable, civic, religious, and political contributions and donations;

(8) all dues or membership fees paid, including an identification of that portion of those dues or membership fees paid to a trade association, industry group, or other organization formed to advance, or whose activities are or become primarily directed toward advancing, utility interests, which relate to activities listed in paragraphs (1)-(7) of this subsection if known following reasonable inquiry by the utility; and

(9) other expenses as deemed appropriate by the commission.

§25.78. *State Agency Utility Account Information.*

(a) Application. The requirements of this section shall apply to any electric utility, including a municipally-owned electric utility.

(b) In this section, "State agency" shall have the following meaning:

(1) any board, commission, department, office, or other agency in the executive branch of state government that is created by the constitution or a statute of the state;

(2) an institution of higher education as defined by the Education Code §61.003, other than a public junior college;

(3) the legislature or a legislative agency; or

(4) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, a state judicial agency, or the State Bar of Texas.

(c) An electric utility shall provide the information required in subsection (e) of this section for each state agency account in the prescribed form and medium. The electric utility shall obtain from the General Services Commission or its designee a copy of the field layouts and electronic format that the electric utility shall use. The General Services Commission or its designee shall notify the electric utility of any changes to the field layouts and electronic format with sufficient time for the electric utility to submit the information required by this subsection in a timely manner. Such form and medium must make the reports easy to compile and analyze in a manner which is not unreasonably costly, and to the extent possible, the General Services Commission or its designee will accommodate the electric utilities' electronic formats.

(d) An electric utility shall retain all billing records for each state agency account for at least four years from the billing date, notwithstanding any other commission rule relating to the retention of billing records that may provide for a shorter retention period.

(e) An electric utility shall:

(1) each year file the monthly billing information for each state agency account required by this subsection within 45 days after the end of the reporting period for the six months ending with the February billing period and for the six months ending with the August billing period.

(2) provide in the prescribed form the following information for each state agency account:

(A) Utility name: name of the electric utility providing service;

(B) Account Name: name of the state agency receiving service from the electric utility;

(C) Account Number;

(D) Account Address: the address of the facility being served by the electric utility, or, if that is not available, the service location;

(E) SIC Code: Standard Industrial Code number applicable to facilities served at the account, if available;

(F) Account Description: descriptive information available to the electric utility regarding the nature of the facilities served at the account, (e.g., office building, traffic signal, etc.) if available;

(G) Rate Class: name of the rate class under which service is provided (e.g., Residential, General Service, Highway Safety Lighting, etc.);

(H) Rate Code: the code number used by the electric utility to identify the rate class under which service is provided;

(I) Service Voltage: the specific service voltage (e.g., 480 volts, 12,470, 69,000, etc.) if available, otherwise provide general voltage level (e.g., secondary, primary, transmission);

(J) Read Date: the date on which the meter was read during the billing period;

(K) Kilowatt-Hour Meter Number: the serial number for the kilowatt-hour meter;

(L) Kilowatt-Hour Multiplier: the multiplier used to determine kilowatt-hour consumption based on the meter reading;

(M) Monthly kWh: the number of kilowatt-hours used for billing purposes;

(N) Demand Meter Number: the serial number for the demand meter if different from that of the kilowatt-hour meter;

(O) Demand Meter Multiplier: the multiplier used to determine demand based on the meter reading;

(P) Demand Reading: the reading taken from the demand meter, stated in kilowatts or kilovolt-amperes;

(Q) Billing Demand: the demand amount used for billing purposes, in kilowatts or kilovolt-amperes;

(R) Metered Demand: the demand amount measured during the billing period, stated in kilowatts or kilovolt-amperes;

(S) KVAR: reactive power measurement for the billing period, if available;

(T) Power Factor: the ratio of real power (kW) to apparent power (kVa), if available;

(U) Customer Revenue: the portion of the bill related to the monthly customer charge or facilities charge, if available;

(V) Power Cost Recovery Factor (PCRF): the PCRF rate for the period that is assessed based on energy usage; the PCRF rate for the period that is assessed based on demand (if applicable); and the total PCRF charge for the period;

(W) Energy Revenue: the portion of the bill related to the monthly energy charge(s), if available;

(X) Demand Revenue: the portion of the bill related to the monthly demand charge(s), if available;

(Y) Base Revenue: the portion of the bill related to the non-fuel charges, including customer, energy, and demand charges, if available;

(Z) Fuel Revenue: the portion of the bill related to fuel and/or purchased power;

(AA) Other Revenue: the portion of the bill related to taxes or other miscellaneous charges;

(BB) Other Charges/Credits: the amount of any non-recurring charges or other credits, such as fuel credits and margin credits;

(CC) Explanation: an explanation of the nature of the charge/credit included in Other Charges/Credits;

(DD) Total Revenue: the total monthly bill, including base, fuel, and other charges;

(EE) Load Factor: the ratio of the average demand during the billing period to the maximum demand; and

(FF) Cost Per Kilowatt-Hour: the total cost during the billing period divided by the number of kilowatt-hours.

(3) provide the information required by this section to the General Services Commission or its designee by electronic transfer, if feasible, or, otherwise, by diskette. Only in cases of extreme undue hardship will it be permissible for an electric utility to provide the information in paper documents.

(f) Information provided pursuant to this section shall be subject to any protections of the Texas Government Code, Public Information Act, Chapter 552. Any request for information required by this section shall be filed with the Office of the Attorney General or its designee.

(g) The commission, electric utilities, and the Office of the Attorney General's designee, as well as representatives of interested state agencies, shall continue to evaluate the effectiveness and efficiency of the public monitoring and verification system for state agency customers provided in this section.

(h) An electric utility shall make a good faith effort to provide all the information required by this section. It is a violation of this section for any information to be omitted from the report unless a good faith reason exists for less than full compliance. Examples of good faith reasons for not providing a complete report include: technical limitations that cannot be corrected without undue expense, unavailability of the particular information on an electric utility's billing system or database, information that cannot reasonably be made available in the form requested, waiver by commission order, or written waiver by the Office of the Attorney General or its designee. Unless otherwise challenged in a complaint proceeding by the Office of the Attorney General as set forth herein, an electric utility is presumed to have made a good faith effort to provide the required information and is not required to seek any type of advance waiver. In the event an electric utility does not provide a complete report, the Office of the Attorney General may file a complaint with the commission. In any such complaint proceeding, the electric utility shall have the burden of showing the omission was in good faith.

#### §25.79. *Equal Opportunity Reports.*

(a) The term "minority group members," when used within this section, shall include only members of the following groups:

(1) African-Americans;

(2) American Indians;

(3) Asian-Americans;

(4) Hispanic-Americans and other Americans of Hispanic origin; and

(5) women.

(b) Each electric utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional electric utility does not indicate Texas-specific numbers, the electric utility shall also prepare, and file with the commission a form, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies, indicating Texas-specific numbers. Each electric utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the electric utility, and employment goals relating thereto, if any.

(c) Any additional information relating to the matters described in this section may be submitted at the electric utility's option.

(d) Any electric utility filing with the commission any documents described in subsections (b) and (c) of this section shall file two copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(e) An electric utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by February 15 of the year it is filed with the local, state or federal agencies. If the report is filed with local, state or federal agencies after February 15, the electric utility shall file the report with the commission by February 15 of the next year.

(f) On May 1 of each year, the commission shall submit a report concerning the filed reports to the Texas legislature.

#### §25.80. *Annual Report on Historically Underutilized Businesses.*

(a) In this section, "historically underutilized business" has the same meaning as in Texas Government Code, §2161.001(2), as it may be amended.

(b) Every electric utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. An electric utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (\*.wk\*) or Microsoft Excel (\*.xl\*) format).

(1) Each electric cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, on the Small Utilities HUB Report form.

(2) Every electric utility other than those specified in paragraph (1) of this subsection shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, on the Large Utilities HUB Report form.

(3) Each electric utility wishing to report indirect HUB procurements may use the Supplemental HUB report form.

(4) Each electric utility shall submit a text description of the method by which it determined which of its vendors is a HUB.



(5) Each electric utility which has more than 1,000 customers in a state other than Texas, or which purchases more than 10% of its goods and services (other than fuel, purchased power, and wheeling) from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is geographically in Texas.

(6) Each electric utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

(c) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(d) This section does not create a new cause of action, either public or private.

*§25.81. Service Quality Reports.*

Service quality reports shall be submitted semi-annually on a form prescribed by the commission.

*§25.82. Fuel Cost and Use Information.*

Copies of all presently effective and future fuel purchase or sale contracts shall be available for examination or filed with the commission on request. Each generating electric utility, including municipally owned generating electric utilities, shall file monthly fuel reports on forms prescribed by the commission.

*§25.83. Construction Reports.*

Each electric utility constructing a facility requiring reporting to the commission under §23.31(c) of this title (relating to Certification Criteria) shall report to the commission on the commission-prescribed preliminary construction report form prior to the commencement of construction.

*§25.89. Report of Loads and Resources.*

Each electric utility that submits an annual report of loads and resources to the Electric Reliability Council of Texas independent system operator pursuant to §23.70(e) of this title (relating to Terms and Conditions of Open-Access Comparable Transmission Service) or other reliability council shall file a copy with the commission and maintain a copy of supporting documentation for five years. If no such annual report is prepared, the utility shall maintain a record of the load and resource documents prepared in the normal course of its activities for five years.

*§25.100. Other Records, Reports, and Information that May be Required.*

The following paragraphs list other sections of this title that have additional requirements for records, reports and other information relating to electric service, that electric utilities, apartment owners or other persons may be required to provide to the commission. This section is to assist persons in locating the requirements. Failure to list a section which requires additional filings in this section does not relieve the person responsible for filing the information of the requirement.

(1) Section 23.18(c), (d), and (e) of this title (relating to Foreign Utility Company Ownership by Exempt Holding Companies);

(2) Section 23.19(d) and (e) of this title (relating to Registration of Power Marketers and Exempt Wholesale Generators);

(3) Section 23.21(c)(1)(F)(iv) and (e) of this title (relating to Cost of Service);

(4) Section 23.23(b)(3), (5), (7) and (8), (c)(3) and (9) of this title (relating to Rate Design);

(5) Section 23.24(c) of this title (relating to Form and Filing of Tariffs);

(6) Section 23.31(c)(2)(D) of this title (relating to Certification Criteria);

(7) Section 23.41(c) of this title (relating to Customer Relations);

(8) Section 23.43(k) of this title (relating to Applicant and Customer Deposit);

(9) Section 23.44(d) of this title (relating to New Construction);

(10) Section 23.48 (c), (d) and (f) of this title (relating to Continuity of Service);

(11) Section 23.50(c) of this title (relating to Central System or Nonsubmetered Master- Metered Utilities);

(12) Section 23.51(b) of this title (relating to Utility Submetering);

(13) Section 23.66(c)(1), (2) and (3), (h)(3) of this title (relating to Arrangements Between Qualifying Facilities and Electric Utilities);

(14) Section 23.67(r), (t), and (u) of this title (relating to Open Access Comparable Transmission Service);

(15) Section 23.70(h)(7), and (o) of this title (relating to Terms and Conditions of Open- Access Comparable Transmission Service);

(15) Section 25.122 of this title (relating to Meter Records);

(16) Section 25.161(c), (d), and (e) of this title (relating to Integrated Resource Planning);

(17) Section 25.165(a) of this title (relating to Preliminary Integrated Resource Plan);

(18) Section 25.169(c) of this title (relating to Approval of Resources Procured Through Solicitation); and

(19) Section 25.301(b)(3) of this title (relating to Nuclear Decommissioning Trusts).

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 August 19, 1998.

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Public Utility Commission of Texas

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



Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

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

### 16 TAC §§26.71–26.82, 26.87, 26.98, 26.100

The Public Utility Commission of Texas (PUC) adopts new §§26.71, relating to General Procedures, Requirements and Penalties; 26.72 relating to Uniform System of Accounts; 26.73 relating to Financial and Operating Reports; 26.74 relating to Reports on Sale of Property and Mergers; 26.75 relating to Reports on Sale of 50% or More of Stock; 26.76 relating to Gross Receipts Assessment Report; 26.77 relating to Payments, Compensation, and Other Expenditures; 26.78 relating to State Agency Utility Account Information; 26.79 relating to Equal Opportunity Reports; 26.80 relating to Annual Report on Historically Underutilized Businesses; 26.81 relating to Service Quality Reports; 26.82 relating to Construction Reports; 26.87 relating to Infrastructure Reports; 26.98 relating to Cost Allocation Manual; and 26.100 relating to Other Records, Reports, and Information that May be Required with changes to the proposed text as published in the May 15, 1998 *Texas Register* (23 TexReg 4746). The new sections are adopted under Project Number 19121. These new sections will replace §§23.11 relating to General Reports; 23.12 relating to Financial Records and Reports; 23.13 relating to Statistical Reports; and 23.14 relating to Maintenance and Location of Records as they apply to the telecommunications service providers. The new sections ensure that the commission is able to adequately monitor the activities of telecommunications utilities for compliance with the Public Utility Regulatory Act, Texas Utilities Code, §11.001 - 63.063, other state statutes and/or federal requirements, and to assure the availability of safe, reliable and high quality telecommunications service at just and reasonable rates. These sections provide rules that clarify commission procedures and more accurately reflect current statutes.

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

The commission published notice of its intention to review §§23.11 - 23.14 in the May 15, 1998 issue of the *Texas Register* (23 TexReg 4935). In the notice of intention to review the commission requested specific comments on the Section 167 requirement regarding whether the reason for adopting §§23.11 - 23.14 continues to exist in adopting the corresponding sections in Chapter 26. The commission received no comments regarding the Section 167 requirement and finds that the reason

for adopting §§23.11 - 23.14 continues to exist in adopting these new sections.

The commission received comments on the proposed sections from AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone Company (SWBT).

#### *Section 26.71(f)(8) regarding due dates of reports:*

SWBT filed comments on proposed new §26.71(f)(8) concerning due dates of reports. SWBT states that the State Comptrollers' office requires the annual Gross Receipts Assessment Report be filed by August 15 of each year for the previous July 1 through June 30 reporting period. Therefore this report could not be filed with the commission by June 1 of each year.

The commission agrees with SWBT and modifies §26.71(f)(8) to reflect that this report is due by August 15 of each year for the previous July 1 through June 30 reporting period.

#### *Sections 26.72(g) and 26.73(a) and (b):*

AT&T suggest that the reference to "telephone utility" in proposed §26.72(g) and §26.73(a) and (b) be changed to "public utility" to clarify that these sections apply to dominant carriers.

The commission agrees with AT&T and incorporates these changes.

#### *Section 26.73(c) regarding Securities and Exchange Commission Reports:*

SWBT recommends that the requirement to file three paper copies of reports filed with the Securities and Exchange Commission (SEC) be eliminated and replaced with a requirement of a notification letter to the commission for each filing made by the utility or the utility's parent. The notification letter would include the type of filing (i.e., 10-K, 10-Q, 8-K, etc.), the date of the filing, and the SEC web address to locate the report. SWBT submits that its proposal will help conserve the monetary and physical resources of both utilities and the commission.

The commission declines to make the change requested by SWBT at this time. State law requires the commission to keep an official record copy of all required reports. At this time, this record copy must be in paper form and the paper form is also needed for scanning into the commission's Agency Information System. To assess SWBT's proposal, a copy of SWBT's 1998 8-K report was downloaded using the SEC's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). This report, as downloaded, would require a considerable amount of staff time to reformat the report to be acceptable for scanning purposes. It is anticipated that in the future the commission may be able to maintain its official record copy in electronic media and may be able to directly download the documents in an acceptable form from other programs such as EDGAR. At that time, the commission may reconsider SWBT's recommendation.

#### *Section 26.77 relating to Payments, Compensation, and Other Expenditures:*

The commission requested specific comments concerning the effect on the public interest of raising the threshold amount for reporting of information in proposed §25.77 from \$250 to \$500. SWBT commented that raising the expense limit from \$250 is long over due and recommended that the limit be increased to at least \$2,000. SWBT states that even at that level, there is little reason for reporting as the majority of items covered by the rule's requirement are shareholder-borne expenses which are

booked almost entirely to below-the-line accounts and would not be included in a utility's cost of service for ratemaking purposes. SWBT does not believe that the Public Utility Regulatory Act (PURA) ever "obligated" the commission to require the reporting of these types of expenditures on an annual basis. SWBT states that continued application of these reporting requirements to utilities that have elected incentive regulation does not appear to serve a useful purpose.

The commission declines to increase the amount to \$2,000 as recommended by SWBT. This amount is a 300% increase over the amount of \$500 published in the proposed rule and interested persons have not had an opportunity to comment on such an increase. The commission recognizes that PURA does not obligate the commission to require the reporting of these types of expenditures on an annual basis, but does give the commission the authority to do so. Election of incentive regulation is a four year commitment. The commission does not know what future action the legislature may take regarding incentive regulation upon completion of that four year commitment. The commission declines to change the application of these reporting requirements to utilities that have elected incentive regulation in this proceeding, but may revisit this issue once the legislature has determined the future of incentive regulation. The commission adopts the \$500 threshold for reporting information relating to payments, compensation, and other expenditures.

*Other clarifying changes made by the commission.*

*Section 26.80 relating to Annual Report on Historically Underutilized Businesses:*

The commission proposed language requiring utilities with more than 1,000 customers in a state other than Texas, or which purchase more than 10% of its goods and services from vendors in a state other than Texas, to report Texas data separately from data for other states. Southwestern Public Service Company (SPS) filed comments on proposed new §25.80 relating to Annual Report on Historically Underutilized Businesses as it relates to the electric industry. Section 25.80 corresponds to §26.80 as it relates to the telecommunications industry. SPS comments that some vendors may have headquarters in Texas but the entity doing business with SPS may actually be located in another state. Some vendors may have multi-state locations and may show up twice in the report. SPS requested clarification of what is intended to be reported as "Texas data" to assist in determining which Texas vendors actually need to be reported separately from other states.

In response to SPS's request for clarification, the commission modifies §25.80(b)(5) and §26.80(b)(5) by adding language to clarify what needs to be reported as Texas data and who is considered a Texas vendor.

*Section 26.71(f)(3) and §26.81 relating to Service Quality Reports:*

In proposed §26.81 the commission had modified this section from existing §23.11(i) to require service quality reports on a semi-annual basis for the telecommunications industry from the currently required quarterly basis. Upon further review, the commission finds that it still requires service quality reports for the telecommunications industry on a quarterly basis. For certain measures, a surveillance report is required if the utility's performance is below a commission established threshold level for three consecutive months. If the reporting frequency were

greater than three months, the commission would not be able to obtain meaningful surveillance information to detect sub-standard performance on a geographically disaggregated basis. The quarterly reports are also used to monitor service quality in a competitive environment. Therefore, the commission has deleted proposed §26.71(f)(3) relating to semi-annual reports and has modified proposed §26.81 to require quarterly reports consistent with current commission practice.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent, i.e., the commission inserted the language "as classified in §26.72(b)" in §26.73(a)(1); has changed the word "contains" to the word "list" in §26.100 (implied (a)); and corrected the form of citation to statute in §26.78(b)(2).

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

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

*§26.71. General Procedures, Requirements and Penalties.*

(a) Who shall file. The record keeping, reporting, and filing requirements listed in this subchapter shall apply to all public utilities operating in the State of Texas, excluding municipally owned utilities, unless otherwise specified. Unless otherwise specified in this subchapter the term "public utility" or "utility," insofar as it relates to telecommunications utilities, shall refer to dominant carriers. Moreover, the provisions of this subchapter are applicable to all services provided by such carriers.

(b) Initial reporting. Unless otherwise specified in a section of this subchapter, periodic reporting shall commence as follows:

(1) Quarterly reporting. For all public utilities and other persons required to file records, reports and other required information under this chapter, who are not already filing quarterly with the commission as of the effective date of this section, reporting shall begin with an initial filing for the first fiscal quarter for which information is available.

(2) Annual Reporting. For all public utilities and other persons required to file records, reports and other required information under this chapter, who are not already filing annually with the commission as of the effective date of this section, reporting shall begin with an initial filing for the most recent fiscal year ending on or prior to April 30 of the first year the record, report or other required information must be filed with the commission.

(c) Maintenance and Location of Records. All records, books, accounts, or memoranda required of a public utility, as defined in the Public Utility Regulatory Act, §51.002(8) may be kept outside the State of Texas so long as those records, books, accounts, or memoranda are returned to the state for any inspection by the commission that is authorized by the Public Utility Regulatory Act.

(d) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(e) Information omitted from reports. The commission may waive the reporting of any information required in the sections of this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(f) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter.

(1) Monthly reports: 45 days after the end of the reported period.

(2) Quarterly reports other than shareholder reports: 45 days after the end of the reported period.

(3) Annual earnings report: May 15 of each year.

(4) Shareholder annual reports: seven days from the date of mailing the same to shareholders.

(5) Securities and Exchange Commission Filings: 15 days from the initial filing date with the Securities and Exchange Commission.

(6) Special or additional reports: as may be prescribed by the commission.

(7) Annual reports required by §26.76 of this title (relating to Gross Receipts Assessment Report) shall be due August 15 of each year and shall reflect transactions for the previous July 1 through June 30 reporting period.

(8) Annual reports required by §26.77 of this title (relating to Payments, Compensation, and Other Expenditures) shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.

(9) Periodic Certificate of Operating Authority report: Due as set forth in the commission order granting the certificate.

(g) Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(h) Penalty for refusal to file on time. In addition to penalties prescribed by law, and §22.246 of the title (relating to Administrative Penalties) the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

#### §26.72. *Uniform System of Accounts.*

(a) In this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to dominant carriers. Moreover, the provisions of this section are applicable to all services provided by such carriers. Every utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

(b) Classification. For the purposes of accounting and reporting to the commission, each public utility shall be classified as follows:

(1) Class A: utilities with annual regulated operating revenues exceeding \$100 million.

(2) Class B: utilities with annual regulated operating revenues less than \$100 million.

(c) System of accounts. For the purpose of accounting and reporting to the commission, each public utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(1) Class A: uniform system of accounts as adopted and amended by the Federal Communications Commission for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(2) Class B: uniform system of accounts as adopted and amended by the Federal Communications Commission for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(d) Other system of accounts. When a utility has adopted a uniform system of accounts as may be required by a state or federal agency other than those previously mentioned in this section (e.g. United States Department of Agriculture - Rural Utilities Service), that system of accounts may be adopted by the utility after notification to the commission.

(e) Merchandise accounting. Each utility shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

(f) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

(g) Rules related to capitalization of construction costs. Each public utility shall accrue interest during construction on both short-term (on an off-book basis, if necessary) and long-term telephone plant under construction to the extent not included in rate base. In the event construction work in progress is included in rate base pursuant to the rules in subsection §23.21(c)(2)(D) of this title (relating to Cost of Service), interest during construction for public utilities shall be discontinued to the extent construction work in progress or telephone plant under construction is allowed.

#### §26.73. *Financial and Operating Reports.*

(a) Annual reports.

(1) Each Class A and B public utility, as classified in §26.72(b), shall file with the commission the same annual report as is required of such utility by the Federal Communications Commission or United States Department of Agriculture - Rural Utilities Service. Such annual reports shall be filed on the same dates as required to be filed by the Federal Communications Commission or the United States Department of Agriculture-Rural Utilities Service, whichever is applicable.

(2) Each utility holding company subject to annual reporting to the Securities and Exchange Commission and each utility shall file with the commission three copies of its annual report to shareholders, customers, or members. Unless included in the annual report to shareholders, customers, or members, each utility shall file concurrently with the filing of such report three copies of any audited financial statements that may have been prepared on its behalf.

(b) Annual earnings report. Each utility shall file with the commission, on commission prescribed forms, an earnings report providing the information required to enable the commission to properly monitor public utilities within the state.

(1) Each utility shall report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than the date prescribed in §26.71(f)(4) of this title (relating to General Procedures, Requirements, and Penalties).

(3) On the due date of the annual earnings report, each utility with a rate proceeding pending before the commission, pursuant to the Public Utility Regulatory Act, Chapter 53, in which a rate filing package is required, may submit an abbreviated earnings report. Specifications for the abbreviated filing are included in the General Filing Instructions for the annual earnings report.

(4) Each dominant certificated telecommunications utility shall submit annually an access line report as part of its annual earnings report.

(c) Securities and Exchange Commission reports. Each utility and utility holding company subject to reporting requirements of the Securities and Exchange Commission shall file three copies of each required report with the commission. Three copies of each such report including 10-Ks, 10-Qs, 8-Ks, Annual Reports, and Registration Statements filed with the Securities and Exchange Commission shall be submitted to the commission no later than 15 days from the initial filing date with the Securities and Exchange Commission.

(d) Duplicate Information. A utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

#### §26.74. Reports on Sale of Property and Mergers.

(a) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of \$100,000 unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

(b) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not merge or consolidate with another public utility or electric utility operating in the State of Texas unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

(c) Dominant carriers shall not purchase voting stock in another public utility or electric utility doing business in the State of Texas, unless the utility reports such purchase to the commission while pending or within 30 days after closing.

(d) Dominant carriers shall not loan money, stocks, bonds, notes or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

(e) Incumbent local exchange companies electing under the Public Utility Regulatory Act, Chapter 58, are exempt from the requirements of subsections (a) and (b) of this section.

(f) For dominant carriers, investigations by the commission, with or without public hearing, of the transactions described in subsection (a) and (b) of this section must be completed within 180 days after the date of notification by the dominant carrier. If an order is not entered within that time, the utility's action is considered consistent with the public interest.

#### §26.75. Reports on Sale of 50% or More of Stock.

(a) All transactions involving the sale of 50% or more of the stock of a dominant carrier except a local exchange company exempted in subsection (b) of this section, shall be reported to the commission while pending or within 30 days after closing.

(b) Incumbent local exchange companies electing under the Public Utility Regulatory Act, Chapter 58, are exempt from the requirements of this subsection.

(c) For dominant carriers, investigations by the commission, with or without public hearing, of the transactions described in this section must be completed within 180 days after the date of notification by the dominant carrier. If an order is not entered within that time, the utility's action is considered consistent with the public interest.

#### §26.76. Gross Receipts Assessment Report.

All telecommunications utilities subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment as required by the Public Utility Regulatory Act on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Chapter 16, Subchapter A.

#### §26.77. Payments, Compensation, and Other Expenditures.

Dominant carriers shall file with the commission an annual report providing information for each of the following classes of payments, compensation (other than salary or wages subject to the withholding of federal income tax) and expenditures made relating to matters in Texas, and detailing (by payee) each expenditure (and for the purposes of this section any series of expenditures) made to a single payee exceeding \$500 for:

- (1) business gifts and entertainment;
- (2) institutional, consumption-inducing, and other advertising expenses;
- (3) public relations expenses;
- (4) legislative matters, including advocacy before any legislative body;
- (5) representation before any governmental agency or body, including municipalities;
- (6) legal expenses not accounted for in other categories of this subsection;
- (7) charitable, civic, religious, and political contributions and donations;
- (8) all dues or membership fees paid, including an identification of that portion of those dues or membership fees paid to a trade association, industry group, or other organization formed to advance, or whose activities are or become primarily directed toward advancing, utility interests, which relate to activities listed in paragraphs (1)-(7) of this subsection if known following reasonable inquiry by the utility; and
- (9) other expenses as deemed appropriate by the commission.

#### §26.78. State Agency Utility Account Information.

(a) Application. The requirements of this section shall apply to each certificated telecommunications utility.

(b) In this section "state agency" shall have the following meaning:

(1) any board, commission, department, office, or other agency in the executive branch of state government that is created by the constitution or a statute of the state;

(2) an institution of higher education as defined by the Education Code §61.003, other than a public junior college;

(3) the legislature or a legislative agency; or

(4) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, a state judicial agency, or the State Bar of Texas.

(c) A utility shall provide the information required in subsection (e) of this section for each state agency account in the prescribed form and medium. The utility shall obtain from the General Services Commission or its designee a copy of the field layouts and electronic format that the utility shall use. The General Services Commission or its designee shall notify the utility of any changes to the field layouts and electronic format with sufficient time for the utility to submit the information required by this subsection in a timely manner. Such form and medium must make the reports easy to compile and analyze in a manner which is not unreasonably costly, and to the extent possible, the General Services Commission or its designee will accommodate the utilities' electronic formats.

(d) A utility shall retain all billing records for each state agency account for at least four years from the billing date, notwithstanding any other commission rule relating to the retention of billing records that may provide for a shorter retention period.

(e) Each certificated telecommunications utility in its capacity as local service provider shall:

(1) each year file the information for each state agency account required by this subsection within 45 days after the end of the reporting period for the six months ending with the February billing period and for the six months ending with the August billing period.

(2) provide in the prescribed form the following information for each state agency account:

(A) Utility Name: name of the utility providing service;

(B) Account Name: name of the state agency receiving service from the utility;

(C) Agency Code Number, if available, or Account Number, if the agency code number is not available, or Telephone Number, if the account number is not available;

(D) Account Address: the address of the facility being served by the utility;

(E) Service Code: identifying code for each service or product provided (for example, Universal Service Order Code);

(F) Service Description: each service code should have a separate description;

(G) Quantity: the number of units of each product or service purchased;

(H) Unit Rate: the rate charged for each unit of each service or product listed; and

(I) Total Price: the total amount charged for each service or product listed; and

(3) provide the information required by this subsection to the General Services Commission or its designee by electronic transfer, if feasible, or, otherwise, by diskette. Only in cases of extreme undue hardship will it be permissible for a utility to provide the information in paper documents.

(f) Information provided pursuant to this subsection shall be subject to any protections of the Texas Government Code, Public Information Act, Chapter 552. Any request for information required by this section shall be filed with the Office of the Attorney General or its designee.

(g) The commission, utilities, and the Office of the Attorney General's designee, as well as representatives of interested state agencies, shall continue to evaluate the effectiveness and efficiency of the public monitoring and verification system for state agency customers provided in this section.

(h) A utility shall make a good faith effort to provide all the information required by this section. It is a violation of this section for any information to be omitted from the report unless a good faith reason exists for less than full compliance. Examples of good faith reasons for not providing a complete report include: technical limitations that cannot be corrected without undue expense, unavailability of the particular information on a utility's billing system or database, information that cannot reasonably be made available in the form requested, waiver by commission order, or written waiver by the Office of the Attorney General or his or her designee. Unless otherwise challenged in a complaint proceeding by the Office of the Attorney General as set forth herein, a utility is presumed to have made a good faith effort to provide the required information and is not required to seek any type of advance waiver. In the event a utility does not provide a complete report, the Office of the Attorney General may file a complaint with the commission. In any such complaint proceeding, the utility shall have the burden of showing the omission was in good faith.

*§26.79. Equal Opportunity Reports.*

(a) The term "minority group members," when used within this section, shall include only members of the following groups:

(1) African-Americans;

(2) American Indians;

(3) Asian-Americans;

(4) Hispanic-Americans and other Americans of Hispanic origin; and

(5) women.

(b) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility shall also prepare, and file with the commission a form, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies, indicating Texas-specific numbers. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating thereto, if any.

(c) Any additional information relating to the matters described in this section may be submitted at the utility's option.

(d) Any utility filing with the commission any documents described in subsections (b) and (c) of this section shall file two copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(e) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by February 15 of the year it is filed with the local, state or federal agencies. If the report is filed with local, state or federal agencies after February 15, the utility shall file the report with the commission by February 15 of the next year.

(f) On May 1 of each year, the commission shall submit a report concerning the filed reports to the Texas legislature.

*§26.80. Annual Report on Historically Underutilized Businesses.*

(a) In this section, "historically underutilized business" has the same meaning as in Texas Government Code, §2161.001(2), as it may be amended.

(b) Every utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. A utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (\*.wk\*) or Microsoft Excel (\*.xl\*) format).

(1) Each small local exchange company and telephone cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, on the Small Utilities HUB Report form.

(2) Every utility other than those specified in paragraph (1) of this subsection shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, on the Large Utilities HUB Report form.

(3) Each utility wishing to report indirect HUB procurements may use the Supplemental HUB report form.

(4) Each utility shall submit a text description of the method by which it determined which of its vendors is a HUB.

(5) Each utility which has more than 1,000 customers in a state other than Texas, or which purchases more than 10% of its goods and services from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is geographically in Texas.

(6) Each utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

(c) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(d) This section does not create a new cause of action, either public or private.

*§26.81. Service Quality Reports.*

Service quality reports shall be submitted quarterly on a form prescribed by the commission.

*§26.82. Construction Reports.*

Each utility constructing a facility requiring reporting to the commission under §23.31(c) of this title (relating to Certification Criteria) shall report to the commission on the commission-prescribed preliminary construction report form prior to the commencement of construction.

*§26.87. Infrastructure Reports.*

Each incumbent local exchange company (LEC) that elects incentive regulation under the Public Utility Regulatory Act (PURA), Chapters 58 or 59 shall file an infrastructure report with the commission each year on the anniversary date of its election. One copy of the report must be filed as a hard copy and one copy must be filed in an electronic format. The report must include sufficient information to ensure compliance with the requirements of PURA §58.053, Chapter 58, Subchapters F and G, and Chapter 59, Subchapters C and D. At a minimum, the report must include the following information:

(1) End-to-end digital connectivity.

(A) Percent and total number of access lines that have end-to-end digital connectivity available. Also, total number of lines that were upgraded to end-to-end digital connectivity during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and Common Language Location Identification (CLLI) Code, and by class of customers (such as residential and business).

(B) The associated investment and expense for the previous year and cumulative for the period since election.

(C) The total number of equipped and active voice channels, number of channels on fiber optics, and number of channels on copper facilities. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(2) New digital switch deployment.

(A) Percent and total number of local exchange access lines served by digital switching facilities. Also, total number of lines that were served by new digital switching equipment during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(B) Percent and total number of central offices equipped with digital switching facilities. Also, total number of central offices that were equipped with new digital switching equipment during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(C) The associated investment and expense for the previous year and cumulative for the period since election.

(D) The type, make, and quantity of switching equipment installed during the previous year. This information shall be provided for each wire center or central office, identified by name and CLLI Code. Also include actual installation and service dates of the switch along with a brief description of its functionalities and capabilities.

(3) Inter-office broadband facilities (capable of transmitting at least 45 megabits per second of digital information).

(A) Percent and total number of inter-office facilities that use broadband facilities. Also, total number of inter-office facilities that were upgraded for broadband capability during the previous year and cumulative for the period since election.

(B) Include schematic diagrams that indicate quantity (such as fiber sheath miles, and number of strands, number of DS-3 channels or optical channels, etc.) and relative location for each such facility, for the previous year. Also include installation and service dates for such facilities.

(C) The associated investment and expense data for such facilities, for the previous year and cumulative for the period since election.

(4) Common Channel Signaling System (SS-7) deployment.

(A) Percent and total number of central offices equipped with SS-7 capability. Also, total number of central offices that were equipped with SS-7 capability during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code. Also include actual installation and service dates of SS-7 capability along with a brief description of its functionalities.

(B) The associated investment and expense data for such facilities, for the previous year and cumulative for the period since election.

(5) Fiber optic facilities to tandem central offices.

(A) Percent and number of serving central offices that have optical fiber facilities to their connecting tandem offices. Also, total number of serving central offices that were upgraded with fiber optic facilities to their respective tandem switching office during the previous year and cumulative for the period since election.

(B) Include schematic diagrams that indicate quantity (such as fiber sheath miles, and number of strands, or number of DS-3 channels or optical channels etc.) and relative location of each such facility, for the previous year. Also include installation and service dates for those facilities.

(C) The associated investment and expense data, for the previous year and cumulative for the period since election.

(6) Infrastructure commitment to certain entities.

(A) Identify each entity, by name and type, that requests services provided under PURA, Chapter 58, Subchapter G or Chapter 59, Subchapters C and D, as applicable. Include the address and telephone number for each entity served.

(B) For each entity identified in subparagraph (A) of this paragraph, list the date of each request and the actual installation and service dates. Also list the type of service(s) requested and actually provided, including quantity and location. Provide information that describes the functionalities and application of each type of service provided.

(C) For each service provided to an entity under PURA, Chapter 58, Subchapter G or Chapter 59, Subchapters C and D, except for point-to-point intraLATA 1.544 megabits per second service offered at a flat monthly tariff rate under PURA §58.259, a customer specific contract shall be filed with the commission within 30 days of the execution of the contract. Information under this subparagraph need not be included in the annual report required by this subsection, although the annual report should refer the reader to this filing for specific data.

(7) A listing of exchanges with no digital presence as of September 1, 1995. Also, state which exchanges have been upgraded with digital service and the date put in service. The information required by this paragraph shall be provided in an electing company's

initial report under this subsection and is not required to be provided in subsequent reports.

§26.98. *Cost Allocation Manual.*

(a) Cost allocation manual requirement. Each dominant certificated telecommunications utility that provides regulated intrastate utility service and also provides nonregulated utility service or sells other services or products shall maintain and file with the commission annually a cost allocation manual (CAM) describing the methodology used for allocating its costs between its regulated activities and its other activities in accordance with this subsection.

(b) Allocation of costs. Notwithstanding any provision of this subsection to the contrary, each dominant certificated telecommunications utility shall maintain its accounts and subaccounts consistent with the content and titles prescribed in the Uniform System of Accounts for Telecommunications Companies as adopted and amended by the Federal Communications Commission (FCC) for Class A utilities. Each dominant certificated telecommunications utility subject to the FCC Class A cost allocation manual (CAM) filing requirements shall apportion its total costs in each of the Part 32 accounts into regulated, nonregulated and other cost pools, as required by the FCC rules governing this allocation (FCC Rule 64.901 - Allocation of Costs) and as filed in that dominant certificated telecommunications utility's CAM on file with the FCC. For such dominant certificated telecommunications utilities, the Part 32 accounts, appropriate cost pools, and approved apportionment methods are set forth in the FCC-approved CAM filed by the Class A dominant certificated telecommunications utilities. Each dominant certificated telecommunications utility not subject to the FCC Class A CAM filing requirements shall describe the methodology used to apportion its total costs in each of the Part 32 accounts into regulated, nonregulated and other cost pools. After initial assignment, costs included in the common cost pool shall be apportioned to the regulated and nonregulated cost pools utilizing the apportionment methods approved by the commission. The Part 32 accounts, appropriate cost pools, and approved apportionment methods are set forth in the commission-approved cost allocation matrix, which is available from the commission's central records office.

(c) Contents of CAM. The CAM filed with the commission by a dominant certificated telecommunications utility shall contain at least the following sections and information:

(1) Introduction - including a discussion of the cost accounting concepts, language, and applications utilized throughout the CAM;

(2) Nonregulated Activities - identifying each nonregulated product or service provided by the dominant certificated telecommunications utility and the accounts associated with each such nonregulated product or service;

(3) Incidental Activities - identifying all incidental activities of the dominant certificated telecommunications utility. Incidental activities shall be defined using the following four criteria:

(A) the activity must be an outgrowth of regulated operation;

(B) the activity cannot constitute a separate line of business;

(C) the activity must have been traditionally treated as regulated for accounting purposes; and

(D) the total of all incidental activities' revenues must not exceed 1.0% of a carrier's total revenues;



(4) Costs Apportionment Table - identifying the dominant certificated telecommunications utility's specific methodologies, taken from the commission- approved cost allocation matrix, applied to each Part 32 account to apportion costs between regulated activities and nonregulated activities. For Class A dominant certificated telecommunications utilities, the appropriate cost pools and apportionment methods approved by the FCC shall be used; and

(5) Time Reporting Procedures - describing the time reporting system used by the dominant certificated telecommunications utility's regulated telephone operating units, how frequently the reporting system is updated, the methods used to train employees to report time accurately, and the methods used to implement, monitor, and reinforce accurate time reporting by employees.

(d) Filing requirements. Each dominant certificated telecommunications utility shall file annually, by June 1, with the commission the following information for the preceding calendar year:

(1) its CAM;

(2) estimates of the monetary costs or savings associated with any annual revisions by the dominant certificated telecommunications utility to its CAM, broken down with reference to particular affected Part 32 accounts;

(3) a statement signed by an officer of the dominant certificated telecommunications utility attesting to the fact that the CAM was followed throughout the year for regulatory reporting purposes;

(4) a regulated/nonregulated comparative percentage report. The report shall be broken down by Part 32 account, and shall be further broken down within each such account to indicate separately:

(A) the dollar amount of regulated and nonregulated revenues/expenses/invested capital (ratebase); and

(B) the percentages (based on the total amount of revenues/expenses/invested capital (ratebase) within that account) of those revenues/expenses/invested capital (ratebase) that are generated by regulated activities and by nonregulated activities. The report shall present the information in a comparative form with the immediate prior year regulated/nonregulated comparative percentage report. The first report shall contain only first year information; and

(5) a copy of any audits, interpretive letters, reviews, or orders pertaining to the dominant certificated telecommunications utility's CAM or its application to transactions with affiliates or nonregulated lines of business which have been issued by the FCC.

(e) Alternative filings. Notwithstanding any provision of this subsection to the contrary:

(1) If the FCC requires a dominant certificated telecommunications utility to file a CAM regarding its interstate activities, and that dominant certificated telecommunications utility uses the same allocation basis for its intrastate costs as it does for its interstate costs, then the dominant certificated telecommunications utility shall meet the requirements of subsection (e)(3) of this section by filing with the commission annually by June 1 a complete copy of the CAM it filed most recently with the FCC, and, for purposes of developing and maintaining a CAM for its intrastate costs, shall follow the procedures set forth by the FCC for interstate cost allocation.

(2) If a dominant certificated telecommunications utility allocates its intrastate costs on the same basis on which an affiliate of the dominant certificated telecommunications utility allocates its interstate costs, and the affiliate files a CAM with the FCC, then

the dominant certificated telecommunications utility shall meet the requirements of subsection (c) of this section by filing with the commission annually by June 1 a complete copy of the CAM its affiliate filed most recently with the FCC, and, for purposes of developing and maintaining a CAM for its intrastate costs, shall follow the procedures set forth by the FCC for interstate cost allocation.

(f) Exceptions to CAM filing requirements:

(1) A dominant certificated telecommunications utility is not required to file the information specified in subsection (d)(2) of this section if the only nonregulated activities in which the dominant certificated telecommunications utility engages are the sale or installation, and/or repair of customer premises equipment and/or inside wire.

(2) A dominant certificated telecommunications utility shall not be required to file the information specified in subsection (d)(2) of this section solely on the basis of its ownership of less than 5.0% of the voting securities of a nonregulated entity (which entity would be an affiliate of the dominant certificated telecommunications utility if the dominant certificated telecommunications utility owned 5.0% or more of its voting securities).

(3) A dominant certificated telecommunications utility exclusively engaged in regulated activities is not required to file a CAM with the commission. Annually by June 1, each such dominant certificated telecommunications utility shall file with the commission a statement signed by an officer of the dominant certificated telecommunications utility attesting to the fact that the dominant certificated telecommunications utility was engaged in only regulated activities throughout the preceding calendar year.

(4) A dominant certificated telecommunications utility is not required to file a CAM with the commission if the dominant certificated telecommunications utility's rates have been approved on a reciprocal basis, as provided for in §22.263 of this title (relating to Final Orders).

(5) A dominant certificated telecommunications utility is not required to file the information specified in this section if the dominant certificated telecommunications utility is considered an average schedule company for determining interstate revenue requirements.

(6) A small local exchange company (SLEC) as defined in §23.94 of this title (relating to Small Local Exchange Carrier Flexibility) is not required to file the information specified in subsection (d)(1) of this section. Each SLEC shall file annually, by June 1, with the commission, revision sheets containing all changes made to its CAM for the preceding calendar year.

(g) Dominant certificated telecommunications utility flexibility. If a dominant certificated telecommunications utility subject to this subsection believes that certain Part 32 accounts, cost pools, or apportionment methods are not applicable to its activities, and further believes that its use of alternative accounts, cost pools, or apportionment methods would be in the public interest, then that dominant certificated telecommunications utility may apply to the commission for permission to use specifically identified alternative accounts, cost pools, or apportionment methods described in its application. If the commission finds that such alternative accounts, cost pools, or apportionment methods are in the public interest, then the commission may grant the application. Such an application by a dominant certificated telecommunications utility may be reviewed administratively.

(h) Costs of affiliate transactions. Nothing in this subsection, nor the commission-approved cost allocation matrix, shall relieve the dominant certificated telecommunications utility of its burden of proving in a proceeding pursuant to the Public Utility Regulatory Act (PURA) §§53.151 and §53.152 or §§51.009, 53.101 - 53.113, 53.201 and 53.202 that affiliate transactions meet the requirements of PURA §53.058. The ability of a dominant certificated telecommunications utility to recover its affiliate transactions through the intrastate cost of service remains subject to PURA §53.058.

*§26.100. Other Records, Reports, and Information that May be Required.*

The following paragraphs list other sections of this title that have additional requirements for records, reports and other information relating to telecommunications service, that public utilities, telecommunications utilities, telecommunications providers, or other persons may be required to provide to the commission. This section is to assist persons in locating the requirements. Failure to list a section which requires additional filings in this section does not relieve the person responsible for filing the information of the requirement.

- (1) Section 23.21(e) of this title (relating to Cost of Service);
- (2) Section 23.23(d)(5)(D)(v) and (ix) of this title (relating to Rate Design);
- (3) Section 23.24(c) of this title (relating to Form and Filing of Tariffs);
- (4) Section 23.26(c) and (k) of this title (relating to New and Experimental Services);
- (5) Section 23.28(l) of this title (relating to Promotional Rates for LEC Services);
- (6) Section 23.32(d)(f) of this title (relating to Automatic Dial Announcing Devices);
- (7) Section 23.38(g) of this title (relating to Standards for Granting of Certificates of Operating Authority and Service Provider Certificates of Operating Authority);
- (8) Section 23.44(d)(4) of this title (relating to New Construction);
- (9) Section 23.48(d) of this title (relating to Continuity of Service);
- (10) Section 23.54(b), (g) and (m) of this title (relating to Pay Telephone Service);
- (11) Section 23.57(g)(4) and (g)(6)(B) of this title (relating to Telecommunications Privacy);
- (12) Section 23.58(f) of this title (relating to Pay-per-call Information Services Call Blocking);
- (13) Section 23.61(b), (d), (e), (g), (h), (i) and (j) of this title (relating to Telephone Utilities);
- (14) Section 23.91(l)(1) of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services);
- (15) Section 23.99(g) of this title (relating to Unbundling);
- (16) Section 23.102(i) of this title (relating to Imputation);
- (17) Section 23.106(i) of this title (relating to Selection of Telecommunications Utilities);

(18) Section 23.133(f) of this title (relating to Texas High Cost Universal Service Plan (THCUSP));

(19) Section 23.134(g) of this title (relating to Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan);

(20) Section 23.136(e) of this title (relating to Implementation of the Public Utility Regulatory Act §56.025);

(21) Section 23.138(d) of this title (relating to Additional Financial Assistance (AFA));

(22) Section 23.142(h) of this title (relating to Lifeline Service and Link Up Service Programs);

(23) Section 23.143(h) of this title (relating to Tele-Assistance Service);

(24) Section 26.141(h) of this title (relating to Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications);

(25) Section 26.161(c) of this title (relating to Electronic Publishing).

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 August 19, 1998.

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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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

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**Subchapter Q. 9-1-1 Issues**

**16 TA §26.431**

The Public Utility Commission of Texas (commission) adopts new §26.431, relating to Monitoring of Certain 911 Fees with changes to the proposed text as published in the June 5, 1998 *Texas Register* (23 TexReg 5883). The rule is necessary to implement the commission's statutory requirement to monitor certain fees set by the Advisory Commission on State Emergency Communications (ACSEC). The new rule establishes a procedural framework for how ACSEC will provide the supporting documentation for the assessment of the 911 fees and the allocation of revenue from the fees, including the provision of notice and setting intervention deadlines. This section was adopted under Project Number 18008.

The commission received neither comments nor reply comments on the proposed rule.

The commission modifies subsection (e) to clarify that the commission shall determine whether a proposed rate or allocation is not appropriate and notify ACSEC, the governor, and the Legislative Budget Board within 120 days of the initial filing.

This section was published under Subchapter O relating to 9-1-1 Issues. The subchapter designation for 9-1-1 Issues has been changed to Subchapter Q.

This new rule 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 Texas Health and Safety Code Annotated (Vernon 1998) §§771.071, 771.072, 771.0725 and 771.076, which requires that the commission monitor the establishment of certain 911 fees and the allocation of the revenue from these fees.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and Texas Health and Safety Code Annotated (Vernon 1998) §§771.071, 771.072, 771.0725 and 771.076.

§26.431. *Monitoring of Certain 911 Fees.*

(a) Purpose. The purpose of this section is to implement the commission's statutory requirement to monitor the fees the Advisory Commission on State Emergency Communications (ACSEC) establishes and the allocation of the revenues from such fees pursuant to Texas Health and Safety Code (1998) §§771.071, 771.072, 771.0725 and 771.076.

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

(1) 9-1-1 Service - The meaning established in Texas Health and Safety Code (1998) §771.001(6).

(2) Regional Planning Commission - The meaning established in Texas Health and Safety Code (1998) §771.001(10).

(c) ACSEC shall:

(1) provide documentation to the commission regarding the rate for the fees authorized in Texas Health and Safety Code (1998) §771.071 and §771.072, and the allocation of revenue pursuant to §771.072(d) and (e) including, but not limited to, documentation from each regional planning commission or other public agency designated by the regional planning commission to provide 9-1-1 service;

(2) complete direct mail notice, no later than the fifteenth day after providing its documentation to the commission, to the municipalities and counties whose 9-1-1 service fees are established by ACSEC; and

(3) publish in the *Texas Register* notice of its proposed rates and allocation of revenue, no later than the fifteenth day after ACSEC provides its documentation to the commission.

(d) Interested parties shall file, no later than 45 days after ACSEC publishes notice in the *Texas Register*, comments on ACSEC's documentation and on the appropriateness of the rates for each fee and the allocation of the revenue from such fees.

(e) The commission will review the documentation, rates and revenue allocations provided by ACSEC and any comments submitted. If the commission determines that a proposed rate or allocation is not appropriate, it shall provide comments to ACSEC, the governor, and the Legislative Budget Board within 120 days of ACSEC's initial filing. The commission's comments shall explain its concerns, if any.

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 August 19, 1998.

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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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## TITLE 19. EDUCATION

### Part I. Texas Higher Education Coordinating Board

#### Chapter 5. Program Development

##### Subchapter S. Transfer of Lower Division Course Credit

###### 19 TAC §5.393

The Texas Higher Education Coordinating Board adopts amendments to Chapter 5, Subchapter S, §5.393, concerning Transfer of Lower Division Course Credit (Resolution of Transfer Disputes for Lower-Division Courses) without changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5891). The proposed amendments to the rule would carry out the provisions of Senate Bill 148 of the 75th Legislature, directing the Coordinating Board to develop a recommended core curriculum of at least 42 semester credit hours, including a statement of the content, component areas, and objectives of the core curriculum. The proposed amendments to the rule offer those guiding principles but do not prescribe specific courses, a responsibility designated in the bill to each individual college and university.

There were no comments received concerning the proposed amendments to the rule.

The amendments to the rule are adopted under Texas Education Code, Subchapter S, Section 61.822, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Transfer of Lower Division Course Credit (Resolution of Transfer Disputes for Lower-Division Courses).

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 August 21, 1998.

TRD-9813361

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: September 10, 1998

Proposal publication date: June 5, 1998

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

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###### 19 TAC §§5.400-5.405

The Texas Higher Education Coordinating Board adopts new §§5.400 - 5.405, concerning Transfer of Lower Division Course Credit with changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register*. Sections 5.400, 5.401, and 5.404 are being adopted without changes and will not be republished. The new proposed amendments would carry out the provisions of Senate Bill 148 of the 75th Legislature, directing the Coordinating Board to develop a recommended core curriculum of at least 42 semester credit hours, including a statement of the content, component areas, and objectives of the core curriculum. The new proposed rules offer those guiding principles but do not prescribe specific courses, a responsibility designated in the bill to each individual college and university.

Comments were received regarding the Wellness/Physical Education Activity courses as follows: 114 letters (72 from self-identified citizens, 30 from faculty/staff at Texas A&M University, 6 from Tyler Junior College, 2 from Lamar University, 1 from The University of North Texas, 1 from Texas Tech University, 1 from Richardson Independent School District, and 1 from Texas A&M University at Galveston) protesting the limit of 42 semester credit hours, requesting a larger number of semester credit hours in the core (suggesting 48 semester credit hours), and arguing for the statewide inclusion of physical activity/kinesiology/wellness courses in the core curriculum; 1 letter from a citizen with professional training in kinesiology endorsing the 42 semester credit hours limit and observing that no study exists linking participation in physical activity/kinesiology/wellness courses during college with life-long attitudes or levels of overall fitness; 1 letter from the executive director of Texas Association For Health, Physical Education, Recreation & Dance, endorsing the position taken by the Coordinating Board in the proposed rules in removing the lower-division semester credit hours cap and allowing institutions discretion to include physical activity/kinesiology/wellness semester credit hours if they choose; also endorsing the inclusion of those aspects in the supplementary document. Response: The 42 semester credit hour requirement is mandated by Section 61.822 of the Texas Education Code, and is not at the discretion of the Coordinating Board to change. In response to the comments, Section 5.403 of the rule was changed to remove the 45 semester credit hour lower-division cap.

Comments were received regarding Mathematics (acceptability of college algebra and total Semester credit hours devoted to mathematics) as follows: Nine letters regarding the level of mathematics courses, all uneasy with college algebra as the acceptable minimum, were received, from the University of North Texas, Sul Ross State University, The University of Texas at Tyler, a private citizen, and several faculty from Texas A&M University, including a letter protesting the inclusion of college algebra in the core signed by 43 members of the Mathematics faculty. Letters protesting the inclusion of college algebra as required transfer were also received from Texas A&M University administration and the Faculty Senate. Response: The agency agreed and non-substantive changes in Section 5.402 were made.

Comments were received regarding Lab Science as follows: Several phone calls, letters from Midwestern State, University of Texas at Tyler and Victoria College, numerous questions (not formal comments) and one in-person comment from a Board member were received regarding the difference between non-lab and lab science courses and credit. Response: The agency

disagreed with the comments because the curriculum design charts in Section 5.402 provide for as many as two lab science courses as the institutions design their individual core curricula. No changes to the rules were necessary.

Comments were received regarding concurrent enrollment, "temporary" enrollment for the purpose of circumventing more rigorous "native" core requirements as follows: Letters from University of Houston, University of Texas of the Permian Basin, and Midwestern State University voiced concerns about students who might mix-and-match different core or field of study courses in an effort to find the easiest ones. Administrators and faculty from a wide range of institutions either submitted written comments or phoned to express concern about the potential manipulation for abuse of the free availability of transfer to find the easiest but not most appropriate way to complete these requirements. Response: The Agency agreed to try to address this concern by making modifications to Sections 5.402 (e) and 5.405 (c), and by using language taken from the original statute.

Comments were received regarding inclusion of foreign language in the core as follows: One letter was received from Lamar University defending the inclusion of a specific foreign language requirement. Response: The agency disagreed because some institutions include foreign language proficiency in their admission requirements, it was considered that another curricular requirement could be redundant. The design of the core curriculum outlined in Section 5.402 allows for the inclusion of foreign language but does not require it. No changes were made.

Comments were received regarding whether upper-level courses would be allowed with a core curriculum as follows: Letters from Texas A&M University and Southwest Texas State University were received suggesting that the rule is ambiguous or maintaining that upper-level courses are excluded. Response: The agency disagrees with this comment. Although 42 semester credit hours of any core curriculum must be comprised of lower-division courses in order to be transferrable from two-year colleges, the rules as written address the conditions under which upper-level courses may be included in core curricula that exceed 42 semester credit hours. No changes were made.

Comments were received regarding limiting the core to 45 semester credit hours as follows: Letters from the Texas A&M System office, Texas A&M University, University of Texas of the Permian Basin, and University of Texas at Tyler requested consideration of more than 45 lower-division semester credit hours, and Texas Woman's University voiced concern about the 45 semester credit hours limit minimizing the value of a liberal arts education. Response: The agency disagreed because some institutions did not have any formalized general education, core requirements until the Legislature's first bill concerning core curriculum (1987). The staff believes that a formally recognized core curriculum underlines the importance of a liberal arts education. Section 5.403 was changed, however, to remove the 45 semester credit hour cap on lower-division credit in the core curriculum.

Comments were received regarding focus on "traditional studies" as follows: One comment from Texas Woman's University criticized the core curriculum for its traditionalist design, and calls for a greater focus on ethnic and women's studies. Response: The agency disagreed. The supplementary document "Core Curriculum: Assumptions and Defining Characteristics,"

adopted as a means of guidance to institutions in the design of their curricula, includes these goals in the "Perspectives" section. The curriculum as presented in the rules offers significant opportunity for diversity studies. No changes were made to the rules.

Comments were received regarding exclusion of technical courses from core, and application of rules to academic degree programs as follows: Comments were received from Amarillo College and South Plains College suggesting that this point be clarified. Response: The agency disagreed. The statute specifies that the law applies to academic courses and academic degree programs. Because the courses in each institution's curriculum must be consistent with the courses listed in the Academic Course Guide Manual, which excludes non-academic courses, staff felt this point was sufficiently clear. No changes were made.

Comments were received regarding transferring grades of "D" as part of a 42 semester credit hours block as follows: One letter was received from The University of Texas of the Permian Basin, protesting any move to require that an institution ever be required to accept a grade of "D" in transfer for any reason. Response: The agency disagrees. A modification to Section 5.391 (d) (3) has been proposed for consideration at the October board meeting to strengthen the existing policy of assuring equal treatment of native and transfer students regarding the application of credit in courses with a grade of "D" to any degree requirements.

Comments were received regarding general quality concerns as follows: Although many comments regarding other specific matters also alluded to the general concern for maintaining the quality of undergraduate educational experience, three letters from Texas A&M University focused on the topic. Response: The agency agrees that the quality of undergraduate educational experience throughout the state must be maintained. Although much anecdotal evidence exists on both sides of the quality vs. transfer debate, no empirical evidence has been presented to staff for either position. No changes were made.

The new amendments to the rules are adopted under Texas Education Code, Subchapter S, Section 61.822, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Transfer of Lower Division Course Credit.

#### §5.402. *Core Curriculum.*

(a) In accordance with Texas Education Code, Chapter 61, Subchapter S, each general academic institution and community/technical college shall design and implement a core curriculum, including specific courses comprising the curriculum, of no less than 42 lower-division semester credit hours. No institution may require a core curriculum of more than 42 semester credit hours without Board approval.

(b) Each institution's core curriculum must be designed to satisfy the exemplary educational objectives specified for the component areas of the "Core Curriculum: Assumptions and Defining Characteristics" adopted by the Board; all lower-division courses included in the core curriculum must be consistent with the "Texas Common Course Numbering System;" and must be consistent with the framework identified in Charts I and II of this subsection. Chart I specifies the minimum number of semester credit hours required in each of five major component areas that a core curriculum must include (with sub-areas noted in parentheses). Chart II specifies

options available to institutions for the remaining 6 semester credit hours.

(c) Institutions shall begin to honor student transfer of core courses and core curricula beginning in fall 1998, and must implement the core curriculum requirement by fall 1999.

(d) If a student successfully completes the 42 semester credit hour core curriculum at an institution of higher education, that block of courses may be transferred to any other institution of higher education and must be substituted for the receiving institution's core curriculum. A student shall receive academic credit for each of the courses transferred and may not be required to take additional core curriculum courses at the receiving institution unless the board has approved a larger core curriculum at that institution.

(e) A student concurrently enrolled at more than one institution of higher education shall follow the core curriculum requirements in effect for the institution at which the student is classified as a degree-seeking student.

Figure 1: 19 TAC §5.402(d)

Figure 2: 19 TAC §5.402(d)

(f) Except as specified in subsection (g) of this section, a student who transfers from one institution of higher education to another without completing the core curriculum of the sending institution shall receive academic credit within the core curriculum of the receiving institution for each of the courses that the student has successfully completed in the core curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the core curriculum of the receiving institution.

(g) Each student must meet the minimum number of semester credit hours in each component area; however, an institution receiving a student in transfer is not required to accept component core course semester credit hours beyond the maximum specified in a core component area.

(h) An institution may include within its core curriculum a course or courses that combine exemplary educational objectives from two or more component areas of the exemplary educational objectives defined in this section.

(i) Each institution must note core courses on the transcript of students as recommended by the Texas Association of Registrars and Admissions Officers.

(j) Each institution must publish and make readily available to students its core curriculum requirements stated in terms consistent with the "Texas Common Course Numbering System."

#### §5.403. *Core Curricula Larger than 42 Semester Credit Hours.*

The board will consider approval of a core curriculum from a general academic institution, community college, or technical college if it has been previously approved by the institution's Board of Regents or Board of Directors and is consistent with the following:

(1) The institution must provide a narrative justification of the need and appropriateness of a larger core curriculum that is consistent with its role and mission.

(2) No proposed upper-division core course is substantially comparable in content or depth of study to a lower-division course listed in the "Texas Common Course Numbering System."

#### §5.405. *Field of Study Curricula.*

(a) If a student successfully completes a field of study curriculum developed by the Board, that block of courses may be transferred to a general academic teaching institution and must be

substituted for that institution's lower-division requirements for the degree program for the field of study into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(b) A student who transfers from one institution of higher education to another without completing the field of study curriculum of the sending institution shall receive academic credit in the field of study curriculum of the receiving institution for each of the courses that the student has successfully completed in the field of study curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the field of study curriculum of the receiving institution.

(c) A student concurrently enrolled at more than one institution of higher education shall follow the field of study curriculum requirements of the institution at which the student is classified as a degree-seeking student.

(d) Each institution must review and evaluate its procedures for complying with field of study curricula at intervals specified by the Board and shall report the results of that review to the Board.

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 August 20, 1998.

TRD-9813250

James McWhorter

Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Effective date: September 9, 1998

Proposal publication date: June 5, 1998

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## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 313. Athletic Trainers

##### 25 TAC §§313.3, 313.5, 313.15 313.20

The Advisory Board of Athletic Trainers (board) adopts amendments to §§313.3, 313.5, 313.15 and new §313.20, concerning the licensure and regulation of athletic trainers. New §313.20 is adopted with changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5930). Sections 313.3, 313.5, and 313.15 are adopted without changes, and therefore the sections will not be republished.

The amended and new sections provide for the effective regulation and licensure of athletic trainers. Section 313.3 is amended to cover the cost of administering the licensing program as required by Texas Civil Statutes, Article 4512d, §7(a). Section 313.5 is amended to clarify the intent of the section by deleting unnecessary language. The section is also amended to provide for variety and flexibility in student athletic trainer apprenticeship programs, allowing students to be adequately trained in the practice settings they are likely to encounter as licensed athletic trainers. The section is also amended to establish an effective and efficient method of determining eligibility of out-of-state athletic trainers for Texas examination and licensure.

This method takes into consideration athletic trainer licenses issued by other states and athletic trainer certification issued by a national certification body. Section 313.15 defines acceptable standards of conduct for licensed athletic trainers by prohibiting sexual contact between licensees and persons receiving athletic training services. New §313.20 sets out general parameters of athletic training services to provide guidance and reference to the public and to licensees regarding the provision of those services. The new section will also help to ensure that effective athletic training programs are established which maximize injury prevention, rehabilitation, and treatment.

The following comments were received concerning the proposed sections. Following each comment is the board's response and any resulting changes.

Comment: Concerning §313.3, one commenter states that the proposed fees would be appropriate. The commenter also states that the courses listed in §313.5(b)(1)(A) would be appropriate with the inclusion of a course in athletic training administration.

Response: The board agrees with the first comment. The board disagrees with the second comment. The courses listed in §313.5(b)(1)(A) were proposed for deletion, to be replaced by (1) the requirement of a degree and current licensure as an athletic trainer issued by another state, or (2) a degree and current certification by the National Athletic Trainers Association Board of Certification of this subparagraph. No change was made as a result of this comment.

Comment: One commenter states that the course work for §313.5(b)(1)(A) and (B) should be the same, since there is only one entry level test. The commenter believes this would lessen confusion, improve public education, and promote the status of the profession.

Response: The board disagrees. There is considerable difficulty in defining course work requirements that will ensure adequate training of student athletic trainers in Texas, but at the same time provide for persons who hold athletic training licenses issued by other states to be eligible for Texas examination and licensure. Many times persons who hold these licenses meet course work requirements that are substantially equivalent to Texas course work requirements, but not specifically equivalent. It is necessary for the board to establish an equitable, effective, and efficient method of determining eligibility for these persons. No changes were made as a result of this comment.

Comment: One commenter states that student athletic trainers should not earn apprenticeship hours at their place of employment, except in the case of a stipend.

Response: The board disagrees. Student athletic trainers are working either in college or university settings or in affiliated settings approved by the collegiate supervising athletic trainer. In many of these settings, students are in financial assistance programs that pay an hourly wage for hours worked in the athletic training room or at games or other events. These programs are essential in order to help ensure that students meet their academic goals. No changes were made as a result of this comment.

Comment: One commenter is opposed to proposed §313.5(b)(1)(A)(ii) because the National Athletic Trainers Association Board of Certification (NATABOC) does not reciprocate by accepting state licensure as meeting certification

requirements. The commenter also states that adoption of the rule would open up licensure to more out-of-state applicants and reduce the number of jobs available for Texas students.

Response: The board disagrees. The proposed section is not intended to constitute reciprocity, which is generally recognized to be a mutual agreement between regulatory agencies of different states to license the other state's licensees without imposing examination or other requirements. A person who holds current certification by the NATABOC must hold a degree and must successfully complete the Texas Athletic Trainer Written and Oral/Practical Examinations in order to be licensed in Texas. The commenter did not comment on §313.5(b)(1)(A)(i), but it is important to note that most out-of-state licenses are issued on the basis of NATABOC certification. No changes were made as a result of this comment.

Comment: Two commenters are opposed to proposed §313.5(b)(1)(B)(iii)(I), which deletes the requirement that supervising athletic trainers must be employees of the college or university. One commenter states the rule would put unqualified student athletic trainers in the field and student athletic trainers would not be directly supervised on a day-to-day basis. The commenter also states the rule would eliminate consistency in the program. The other commenter states that this removes responsibility from the supervising athletic trainer and the university and places more responsibility on the student trainer. The commenter also states this takes jobs away from athletic trainers by allowing outside consultants to supervise collegiate athletic training programs on a contract basis.

Response: The board disagrees. The first sentence of the rule requires that athletic training programs "shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer" and this requirement was not proposed for amendment. The amended rule does not alter the responsibilities of supervising licensed athletic trainers as currently set out in the section. Ensuring consistency in athletic training programs so that students may succeed is the responsibility of each college or university that trains students to become athletic trainers. Only licensed athletic trainers may supervise student athletic trainers in the collegiate setting. No changes were made as a result of these comments.

Comment: Concerning §313.5(b)(1)(B)(iii)(III), one commenter agrees with the rule as long as the new language allows student athletic trainers to accumulate some of their hours in secondary school settings as previously allowed.

Response: The board confirms that student athletic trainers may earn a maximum of 600 apprenticeship hours in secondary school settings (as well as other affiliated settings) with the stipulation that no more than 300 hours may be earned at one affiliated setting.

Comment: Concerning §313.5(b)(2), one commenter states that this paragraph should be deleted. The commenter believes that all athletic trainer applicants should meet the qualifications listed under §313.5(b)(1) without regard to whether they hold a degree in physical or corrective therapy.

Response: Section 313.5(b)(2) was not addressed in the proposed rules. Texas Civil Statutes, Article 4512d, §9, sets out athletic trainer licensure qualifications for persons who hold degrees in physical and corrective therapy. The board may not establish more stringent qualifications than those set out in law. No changes were made as a result of this comment.

Comment: Concerning new §313.20, one commenter states that he agrees with the proposal if it would allow more autonomy for licensed athletic trainers, as well as third party billing. If not, the commenter is opposed to the section because it would not give licensed athletic trainers anything that is not already available.

Response: The board disagrees because the purpose of new §313.20 is to set out general parameters of athletic training services to provide guidance and reference to the public and to licensees regarding the provision of those services. The new section will help ensure that effective athletic training programs are established which maximize injury prevention, rehabilitation, and treatment. The new section does not affect the requirement in Texas Civil Statutes, Article 4512d, §1(1) that athletic trainers provide services under the advice and consent of a team physician. No change was made as a result of this comment.

Comment: Concerning new §313.20(a) and (b), one commenter suggested that the term "team physician" should be changed to "physician licensed to practice medicine by a state board of medical examiners or any other qualified health care professional who within the scope of practice of their professional licensure is authorized to refer for health care services."

Response: The definition of "athletic trainer" found in Texas Civil Statutes, Article 4512d, §1(1) requires that athletic training services be provided under the advice and consent of a "team physician." Due to this requirement of law, the board is unable to consider the commenter's recommended language. No change was made as a result of this comment.

Comment: Concerning new §313.20(c)(7), staff noted that "Conduct" should not be capitalized.

Response: The board agrees and has changed "Conduct" to "conduct" at §313.20(c)(7).

Comment: Concerning new §313.20(c)(5) and (7), one commenter states that the terms athletic training and sports medicine are not synonymous. The commenter suggests that both rules use the language "athletic training or sports medicine" instead of "sports medicine."

Response: The board agrees and has added the suggested language at §313.20(c)(5) and (7).

Comment: One commenter states that the Act limits the scope of practice for athletic trainers to: prevention and rehabilitation of injuries; use of physical modalities; and performance with the consent of the team physician. The commenter suggests that the scope of practice set forth in §313.20 is, therefore, too broad in that it: (1) addresses illnesses as well as injuries; (2) includes assessment, treatment, and research; (3) uses the term "a physician" rather than "his physician;" (4) authorizes practice in any setting; (5) defines "athlete" too broadly; and (6) includes a laundry list of activities which are not strictly prevention and rehabilitation of injuries. The commenter is concerned that the inclusion of activities which do not truly require licensure would make it illegal for non-licensed persons to engage in those activities.

Response: In large part, the board respectfully disagrees. Section 1(1) of the Act broadly defines the function of athletic trainers as a person "who, upon the advice and consent of his team physician carries out the practice of prevention and/or physical rehabilitation of injuries incurred by athletes. To carry out these functions the Athletic trainer is authorized

to use physical modalities such as heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment." Illnesses, such as heat exhaustion, must necessarily and obviously be addressed by the athletic trainer to prevent injuries. Assessment, treatment, and research are similarly necessary to the prevention of injuries, and, indeed, "treatment" is specifically authorized by the Act. The use of the term "a physician" merely acknowledges that there may be more than one physician for a particular team, and that an athletic trainer may provide services for more than one team. Athletic trainers do provide their services in a variety of settings (with the advice and consent of a team physician), and nothing in the Act suggests such is improper. The term "athlete" is broadly defined; however, §313.20 clearly provides that athletic training services may only be provided upon the advice and consent of a team physician. The laundry list of services provided by athletic trainers, such as administering first aid and emergency care for acute athletic injuries, does not suggest that such activities may not be provided by others who are not licensed. The Act prohibits non-licensees from providing any of the activities of an athletic trainer as defined in the Act, and this rule in no way makes it illegal for non-licensees to perform any activity not defined in the Act. The board believes that the scope of practice section embodies what is currently included in effective athletic training programs and will assist educators and employers, as well as athletic trainers, to ensure that the prevention of injuries and rehabilitation or treatment of injuries are carried out as effectively as possible. No change was made as a result of this comment.

The comments on the proposed rules received by the board during the comment period were submitted by Texas Nursing Association, several individuals, and board staff. One individual commented in favor of the rule that increases fees. The commenters were generally not in favor of the scope of practice rule and the rule amending the licensure qualifications. The comments received from Texas Nursing Association were not in favor of the scope of practice rule in its entirety. Several commenters raised questions and suggested clarifying language concerning specific provisions in the rules.

The amendments and new section are adopted under Texas Civil Statutes, Article 4512d, §5(a), which provides the board with the authority to adopt rules consistent with the Act which are necessary for the performance of its duties; under Texas Civil Statutes, Article 4512d, §5(c), which provides the board with the authority to establish guidelines for athletic trainers in the state; and under Texas Civil Statutes, Article 4512d, §7(a), which provides the board with the authority to set fees under the Act in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

§313.20. *Scope of Practice.*

(a) A licensed athletic trainer prevents, assesses, treats, rehabilitates, and researches injuries and illnesses incurred by athletes. An athlete is a person involved in exercise, conditioning, or a physical activity that requires physical strength, power, endurance, skill, or speed. A licensed athletic trainer practices under the advice and consent of a team physician.

(b) The activities listed in subsection (c)(1) - (7) of this section may be performed in any setting authorized by a team physician and may include, but not be limited to, an educational institution, professional or amateur athletic organization, an athletic facility, or a health care facility.

(c) Services provided by a licensed athletic trainer may include, but are not limited to:

(1) plan and implement a comprehensive athletic injury and illness prevention program;

(2) conduct an initial assessment of an athlete's injury or illness and formulate an impression of the injury or illness in order to provide emergency or continued care and refer to a physician for definitive diagnosis and treatment, if appropriate;

(3) administer first aid and emergency care for acute athletic injuries and illnesses;

(4) coordinate, plan, and implement a comprehensive rehabilitation program for athletic injuries;

(5) coordinate, plan, and supervise all administrative components of an athletic training or sports medicine program;

(6) provide health care information and counsel athletes; and

(7) conduct research and provide instruction on subject matter related to athletic training or sports medicine.

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 August 18, 1998.

TRD-9813112

Michael Daniel Saly

Chairman

Advisory Board of Athletic Trainers

Effective date: September 7, 1998

Proposal publication date: June 5, 1998

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

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**TITLE 30. ENVIRONMENTAL QUALITY**

**Part I. Texas Natural Resource Conservation Commission**

**Chapter 106. Exemptions From Permitting**

**Subchapter V. Thermal Control Devices**

**30 TAC §106.491**

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §106.491, concerning Dual Chamber Incinerators, without changes to the proposed text as published in the March 20, 1998, issue of the *Texas Register* (23 TexReg 2950); however, the rule language is published for clarification. A correction of error was published in the April 3, 1998, issue of the *Texas Register* (23 TexReg 3611).

**EXPLANATION OF ADOPTED RULE**

This amendment is adopted to reduce the possibility that incinerators operated under the conditions of this section will cause human exposure to potentially harmful substances or cause nuisances. The amendment requires an increase in the minimum afterburner, or secondary chamber, temperature from 1,200 to 1,400 degrees Fahrenheit and requires that combustion gases be retained in the chamber for at least 0.5 seconds. This



temperature increase represents an accepted industry practice and may cause a slight increase in operating costs for additional fuel to raise the temperature of the secondary incinerator chamber. These conditions will allow exhaust gases to be more completely burned prior to release to the atmosphere. The commission is also reducing the hourly charge rate of incinerators covered under this section from 1,000 pounds to 500 pounds per hour to promote more complete combustion. The amendment specifies a minimum stack height of six feet above the peak of the highest building within 150 feet of the stack to promote exhaust gas dispersal and reduce the chances of exhaust gases affecting persons on the ground or in nearby structures. Incinerators operated under this exemption will be required to register with the commission and to maintain records as specified in 30 TAC Chapter 111. This will improve the ability of the commission to enforce the conditions of this section.

The amendment is adopted to allow the section to be more protective of human health.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission estimates that the amendment, which affects new facilities only, may cause a small increase in fuel use to elevate temperatures in the secondary combustion chambers of incinerators. The amended section requires that the stack of the incinerator be at least six feet above the peak of the highest building within 150 feet of the incinerator. This provision could require that the stack of some incinerators be extended or require that the incinerator be relocated. These cases would likely be isolated, and operators finding themselves in this situation would have the option of placing the unit under permit. The amendment thus 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 commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

#### TAKINGS IMPACT ASSESSMENT

The commission estimates that the amendment, which affects new facilities only, may cause a small increase in fuel use to elevate temperatures in the secondary combustion chambers of incinerators. The amended section requires that the stack of the incinerator be at least six feet above the peak of the highest building within 150 feet of the incinerator. This provision could require that the stack of some incinerators be extended or require that the incinerator be relocated to meet the setback distance from buildings. These cases would likely be isolated, and operators finding themselves in this situation would have the option of placing the unit under permit. However, these requirements could cause a situation where the specific use of portions of private property might have to be modified or restricted to comply with the regulation. This could conceivably place a burden on the property. The commission does not believe that this burden would be significant or have a lasting effect. Because incompletely burned substances emitted from incinerators can be harmful to human health, the commission is taking this action in response to what it believes to be a real and substantial threat to public health.

#### 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. The amendment to §106.491 will allow more thorough combustion of incinerator exhaust gas, promote its dispersal, and will not allow new emissions.

#### HEARING AND COMMENTERS

A public hearing regarding the proposed rule was held in Austin on April 13, 1998, and the public comment period also closed on April 13, 1998. No oral comments were received at the public hearing, but the Houston Independent School District (HISD) and the United States Environmental Protection Agency (EPA) submitted written comments on the proposal.

HISD questioned whether existing incinerators charging at 800 pounds per hour (pph) would be regulated down to 500 pph by this amendment or a legislative change to 500 pph. The commenter also asked under what regulations incinerators charging at 800 pph would be regulated.

This amendment will not apply to unmodified existing units which may continue to charge at the higher rate. There is no pending legislation concerning incinerators, and any legislation introduced at the next session of the legislature will require evaluation by the commission to determine the necessary regulation amendments. All incinerators remain subject to the monitoring and recordkeeping requirements of Chapter 111, concerning Control of Air Pollution from Visible Emissions and Particulate Matter. New incinerators that charge above 500 pph will be subject to the permitting requirements of 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. Copies of these rules are available from the New Source Review (NSR) Division at the commission's central office in Austin, from the commission's regional offices, or from the Internet.

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. The commenter further stated that the commission should include assurances that emissions will not interfere with the maintenance of air quality standards.

The current list of standard exemptions was compiled after ongoing evaluations by the commission of the effect of a source category on air quality. 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 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.

#### 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 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.

#### §106.491. *Dual Chamber Incinerators (Previously SE 2).*

Dual-chambered incinerators which burn only waste generated on-site and which meet the conditions of this section are exempt. Incinerators used in the processing or recovery of materials or to dispose of pathological waste as defined in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)), hospital waste, and/or infectious waste are not authorized by this section.

(1) The incinerator shall meet the following design requirements.

(A) The incinerator shall be equipped with an afterburner automatically controlled to operate with a minimum temperature of 1,400 degrees Fahrenheit and a minimum gas retention time of 0.5 seconds.

(B) The manufacturer's rated capacity (burn rate) shall be 500 pounds per hour or less.

(C) Stacks shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arrestors are not considered obstructions.

(D) Stack height shall be six feet above the peak of the highest building within 150 feet.

(2) The incinerator shall meet the following operational conditions.

(A) Before construction begins, the facility shall be registered with the commission's Office of Air Quality in Austin using Form PI-7.

(B) (No change.)

(C) This facility shall be used solely for the disposal of the following waste materials generated on-site: paper, wood, cardboard cartons, rags, garbage (animal and vegetable wastes as defined in Chapter 101 of this title (relating to General Rules)), and combustible floor sweepings; containing overall not more than 10% treated papers, plastic, or rubber scraps. Neither garbage content nor moisture content shall exceed 50% and noncombustible solids shall not exceed 10%.

(D) The manufacturer's recommended operating instructions shall be posted at the incinerator and the unit shall be operated in accordance with these instructions.

(E) Incinerator owners and operators shall meet the monitoring, testing, reporting, and recordkeeping requirements found in Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter).

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 August 20, 1998.

TRD-9813241

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 9, 1998

Proposal publication date: March 20, 1998

For further information, please call: (512) 239-1966

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board

#### Chapter 357. Regional Water Planning Guidelines

##### 31 TAC §357.2, §357.7

The Texas Water Development Board (board) adopts amendments to 31 TAC §357.2 relating to Definitions without change to the proposed text as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6939) and the section will not be republished. The board adopts amendments to 31 TAC §357.7 relating to Regional Water Plan Development with changes to the proposed text as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6939). The proposed amendments will clarify the requirement for providing regional water planning during conditions where flows are at 50% and 75% of

normal. The changes from the proposed sections were made in §357.7(a)(2), (3) and (4) to eliminate proposed amendments intended to clarify how data for population projections, evaluation of current supplies, and for water supply and demand analysis are to be presented in regional water plans. The board will be proposing additional rules to these paragraphs in the near future. An additional change was made in §357.7(a)(5) to clarify that water management strategies shall be developed for cities.

During the initial adoption of Chapter 357, many comments were received on definitions of "normal hydrological conditions," "flows at 50% of normal," and "flows at 75% of normal." Based upon discussions since the initial rule adoption, the board concludes that references in Senate Bill 1 that require regional water planning groups to "submit a plan that has specific provisions for water management strategies to be used when flows are at 50% of normal and when flows are at 75% of normal" require strategies that will be employed as the water supply condition changes from normal availability to the worst case of drought of record. These are often referred to as drought contingency planning or similar such phrases. As the rules are currently written, the regional water planning groups could be required to develop a total of three plans which could be based on water supplies during a period that has less water supply than during the drought of record. This does not appear to be the intent of the legislation.

A key aspect of the type of planning called for in the proposed amendments is that it reflects conditions that are "current and real time" and are not solely dependent on legal authorizations. Several major water providers have such plans, including the City of Corpus Christi, Lower Colorado River Authority, and Colorado River Municipal Water District. In the proposed revisions, the regional water planning groups are to identify the actions, referred to as water management strategies, that would be used when the amount of water in the water source reaches 75% and 50% of the normal amount, such as when a lake contains 50% of its normal amount of water. Examples of the water management strategies that could be considered include water conservation and drought response planning, including water demand management.

To implement these concepts, the board now proposes amendments to §357.2 (Definitions) that would eliminate the definition of "normal hydrological conditions," which currently is based on median flows in the flow range that occurs most frequently for surface water, and on median precipitation values in the precipitation range that occurs most frequently for groundwater. Amendments are proposed to the definitions of "flows at 50% of normal" and "flows at 75% of normal" to remove reliance on the definition of "normal hydrological conditions." Section 357.2 is also amended to number all definitions in conformity with current Texas Register format requirements.

Amendments are adopted to §357.7(a)(3) and (5) (relating to Regional Water Plan Development) to clarify that the regional water planning groups are required only to develop a water plan for drought of record conditions, and are not required to develop separate water plans for conditions where flows are 50% and 75% of normal. The amendments make clear that the basis for planning will be drought of record. The amendments would provide that the regional water planning groups would be required to identify water management strategies for times that flows are at 50% and 75% of normal, but would not be required to meet all shortages at such times. The 50% and 75% levels are triggered by the amount of water that remains in the source

compared to normal conditions. Amendments also would specify that the executive administrator, after coordination with staff of the Texas Natural Resource Conservation Commission and Texas Parks & Wildlife Department and representatives of the regional water planning groups, would identify the methodology to be used to calculate water availability during drought of record and to describe conditions when flows are at 50% and 75% of normal. Rules currently require the executive administrator to consult and develop this calculation for "normal hydrologic conditions."

One comment was received from the Brazos River Authority supportive of the amendments but suggesting changes in the methodology being developed by the TWDB, TNRC, and TPWD to determine when flows are at 50% and 75% of total.

These sections are adopted under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, and under the authority of Texas Water Code, §16.053, which requires the board to develop rules and guidelines: to provide procedures for adoption of regional water plans by regional water planning groups and approval of regional water plans by the board, to govern procedures to be followed in carrying out the responsibilities in Texas Water Code, §16.053; and for the format in which information is to be presented in the regional water plans. The board also proposes the sections under the authority of the provisions of Texas Water Code, §16.053 which require regional water plans to be consistent with guidance principles for the state plan, and which require regional water plans to provide information based on data provided or approved by the board, and which provides certain statutory requirements for the regional water plans.

*§357.7. Regional Water Plan Development.*

(a) Regional water plan development shall include the following:

(1) (No change.)

(2) presentation of current and projected population and water demands. Results shall be reported by city, county and that portion of a river basin within the regional water planning area for major providers of water for municipal and manufacturing purposes, and for categories of water use including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;

(3) evaluation of adequacy of current water supplies available to the regional water planning area for use during drought of record. This evaluation shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements, other planning and water supply studies, and analysis of water supplies currently available to the regional water planning area. Analysis of surface water available during drought of record from reservoirs shall be based on firm yield analysis of reservoirs. Firm yield is defined as the supply the reservoir can provide during a drought of record using reasonable sedimentation rates and the assumption that all senior water rights will be totally utilized. Until information is provided by the Texas Natural Resource Conservation Commission, regional water planning groups may use estimates of the projected amount of water that would be available from existing water rights during a drought of record, when flows are at 75% of normal, and when flows are at 50% of normal. Once this information is available from the Texas Natural Resource Conservation Commission, the regional water

planning group shall incorporate it in its next planning cycle. The executive administrator, after coordination with staff of the Texas Natural Resource Conservation Commission and the Texas Parks and Wildlife Department, shall identify the methodology, in consultation with representatives of regional water planning groups, to be used by regional water planning groups to calculate water availability during drought of record and describe conditions when flows are at 50% and 75% of normal. The executive administrator shall provide available technical assistance to the regional water planning groups upon request to assist them in selecting appropriate methods and data to be used to determine water supply availability. Results of evaluations shall be reported by city, county, and portion of a river basin within the regional water planning area for major providers of municipal and manufacturing water, and for categories of water use including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;

(4) water supply and demand analysis comparing water demands as developed in paragraph (2) of this subsection with current water supplies available to the regional water planning area as developed in paragraph (3) of this subsection to determine if the water users in the regional water planning area will experience a surplus of supply or a need for additional supplies. The social and economic impact of not meeting these needs shall be evaluated by the regional water planning groups and reported by regional water planning area and river basin. Other results shall be reported by city, county, and portion of a river basin within the regional water planning area for major providers of municipal and manufacturing water, and for categories of water use including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock watering. The executive administrator shall provide available technical assistance to the regional water planning groups, upon request, on water supply and demand analysis, including methods to evaluate the social and economic impacts of not meeting needs;

(5) using the water supply needs identified in paragraph (4) of this subsection, plans to be used during the drought of record to provide sufficient water supply to meet the needs identified in paragraph (4) of this subsection and in accordance with water management strategies and scenarios described in paragraph (8) of this subsection. Also, water management strategies shall be identified to be used when flows are at 50% of normal and when flows are at 75% of normal. Water management strategies shall be developed for cities, major providers of municipal and manufacturing water, and for categories of use including municipal, manufacturing, irrigation, steam electric power generation, mining and livestock watering. The plan to be used for water supply during drought of record shall meet all needs for the water use categories of municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock watering except:

(A)-(B) (No change)

(6)-(9) (No change.)

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9813287

Suzanne Schwartz

General Counsel

Texas Water Development Board

Effective date: September 9, 1998

Proposal publication date: July 3, 1998

For further information, please call: (512) 463-7981

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**Part XVIII Texas Groundwater Protection Committee**

**Chapter 601. Groundwater Contamination Report**

**Subchapter A. General Provisions Relating to Public Files and Joint Report**

**31 TAC §§601.2-601.5**

The Texas Groundwater Protection Committee (committee) adopts amendments to 31 TAC §§601.2-601.5, Subchapter A, concerning General Provisions relating to Public Files and Joint Report. Sections 601.2, 601.3 and 601.4 are adopted with changes to the proposed text as published in the June 12, 1998 issue of the *Texas Register* (23 TexReg 6142). Section 601.5 is adopted without changes and will not be republished.

This action also constitutes the committee's re adoption of the rules contained in 31 TAC Chapter 601, concerning the Groundwater Contamination Report, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

**EXPLANATION OF ADOPTED RULE**

The purpose of these rules is to define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. The rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code §26.406. The purpose of the adopted amendments is to implement legislative changes to Texas Water Code §26.403(c) regarding committee membership and to update the rules to reflect correct agency names and to establish the policies of the committee regarding the report. Format changes were also made to conform with recent rules passed by the Secretary of State.

**FINAL REGULATORY IMPACT ANALYSIS**

The committee has reviewed the adopted rulemaking in light of the regulatory impact analysis (RIA) requirements of the Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that have at least one of four results. The adopted rulemaking provides for a listing of the duties and responsibilities assigned to the committee under the Texas Water Code, §26.406, concerning the maintenance by certain state agencies of public files containing documented cases of groundwater contamination and the publication by the committee, in conjunction with the Texas Natural Resource Conservation Commission (TNRCC), of annual groundwater monitoring and contamination reports and to establish general policies of the committee to guide such implementation. The adopted rules are not specifically intended to protect the environment or to reduce risks to human health and therefore, does not meet the definition of a major environmental rule.

The purpose of this specific rulemaking is to review and consider for readoption committee rules under the General Appropriations Act, Article IX, Section 167, 75th Legislature, 1997. As part of this review, the rule was revised to include legislative additions to membership since the rule was adopted.

The rule also does not meet any of the four results that would trigger applicability of §2001.0225. First, the adopted rule does not exceed a standard set by federal law because there is no equivalent federal statute for the reporting of groundwater contamination. Second, this adopted rule does not exceed an express requirement of state law. Sections 26.405(a)(5) and 26.406(c) of the Texas Water Code require the committee to publish a joint groundwater monitoring and contamination report by April 1 of each year. The report must cover the activities and findings of the committee during the previous calendar year. The report must describe the current status of groundwater monitoring programs conducted or required by each agency at regulated facilities or in connection with regulated activities; contain a description of each case documented during the previous year and of each case of groundwater contamination documented during previous periods for which enforcement action was incomplete at the time of issuance of the preceding report; and indicate the status of enforcement action for each case. The committee is also tasked under §26.406(d) of the Texas Water Code to adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report.

Third, this adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because this report is not part of a delegation agreement or contract between the state and a federal program. Finally, this adopted rule does not adopt a rule solely under the general powers of the agency instead of under a specific state law. Rules are required under §26.406(d) of the Texas Water Code.

#### TAKINGS IMPACT ASSESSMENT

The committee has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Ann. §2007.043. The following is a summary of that Assessment. The purpose of this rulemaking is to review and consider for readoption committee rules under the General Appropriations Act, Article IX, Section 167, 75th Legislature, 1997. As part of this review, the rule was revised to include legislative additions to membership since the rule was adopted.

These rules provide for a listing of the duties and responsibilities assigned to the committee under the Texas Water Code §26.406, concerning the maintenance by certain state agencies of public files containing documented cases of groundwater contamination and the publication by the committee, in conjunction with the TNRCC, of annual groundwater monitoring and contamination reports and to establish general policies of the committee to guide such implementation.

Because the rule governs the actions of the member agencies and organizations on the committee, it does not effect private real property and does not, in whole or in part, or temporarily or permanently, restrict or limit a property owner's right to the property that would otherwise exist in the absence of the rule.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted committee rulemaking does not authorize actions listed in Coastal Coordination Act Implementation Rules in 31 TAC §505.11(b)(2) or §505.11(a)(6) or the Natural Resources Code Chapter 33. Section 33.205(a) of the Natural Resources Code states that "An agency or subdivision that takes an agency or subdivision action described by §33.2051 or §33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program."

Title 31 TAC §505.11(b)(2) and §505.11(a)(6), which correspond directly with Natural Resources Code §33.2051 and §33.2053 and describe agency rulemaking actions, requiring certain agencies to comply with §33.205(a) and (b) of the Natural Resources Code when adopting or amending a rule governing certain activities. However, these provisions do not list the committee as an agency subject to the provisions of Natural Resources Code §33.205(a) and (b) or that must demonstrate compliance with the goals and policies of the Coastal Management Plan. The committee is described as "an interagency committee" in Texas Water Code §26.403, with the power to adopt rules under Texas Water Code §26.406(d). Texas Water Code §26.403(b) designates the TNRCC as the lead agency for the committee, and provides that the TNRCC shall administer the activities of the committee; however, the committee is given separate statutory power to adopt rules under §26.406(d). Therefore, the above provisions of the Texas Administrative Code and the Natural Resources Code do not apply to the committee's adoption of rules.

Nonetheless, should the rulemaking actions of the committee be interpreted for any reason as the TNRCC's adoption of rules, none of the adopted rules falls under the actions described in 31 TAC §505.11(b)(2) and §505.11(a)(6) or Natural Resources Code §33.2051 or §33.2053. Therefore, the requirements of the Coastal Management Plan do not apply to this rulemaking.

#### HEARING AND COMMENTS

The proposed rule was published in the June 12, 1998 issue of the *Texas Register* (23 TexReg 6142). No hearing was held on the proposed rule and the public comment period closed on July 13, 1998. Henry, Lowerre, Johnson, Hess, and Frederick Attorneys at Law submitted written comments on the proposal.

#### ANALYSIS OF TESTIMONY

The commentor noted that the existing rules and the proposed amendments were too vague and allowed committee agencies too much discretion in determining what to report.

The committee disagrees with this comment. As previously adopted and as proposed, the rules have purposely been defined in broad terms so that the varying jurisdictional abilities and programs of the contributing agencies could be compiled in similar formats and analyzed by the committee.

The commentor noted that an agency's failure to document groundwater contamination for the committee or to pursue characterization and resolution of groundwater contamination should be addressed by the committee and its rules.

The committee disagrees with this comment. The committee does not possess the statutory authority to adopt rules to compel an agency to take or refrain from taking any certain action related to an agency's reporting requirements or the agency's failure to pursue characterization and resolution of groundwater contamination. The committee only has authority to promulgate

rules defining conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files and the joint report.

The commentator noted that §601.5 of the rules does not reflect the responsibility of all committee member agencies and organizations to provide information for the report.

The committee disagree with this comment and notes that §601.5 conforms with the legislative directive given to the committee under the Texas Water Code, §26.406 (c). However, §601.2 (relating to Applicability) was modified to apply to all agencies and organizations having membership on the committee.

The commentator noted that §601.5 does not define the term "documented".

The committee agrees that the term "documented" was not defined in the proposed rule and has incorporated a definition of the term "Documented groundwater contamination" within §601.3 of the adopted rule. Documented groundwater contamination is defined as a case of groundwater contamination where an agency has an established procedure for making a determination based on the quality of groundwater and the information pertinent to making the determination is maintained by the agency under §601.4(b).

The commentator noted that no section of the proposed rule adequately defines the term "groundwater contamination".

The committee disagrees with this comment. The term "groundwater contamination" is adequately defined under §601.3 (7). This definition is derived from definitions in §26.001 of the Texas Water Code; 40 Code of Federal Regulations, Parts 144, 145, and 146; and Title 30 Texas Administrative Code Chapter 331. However, the committee has modified the definition to refer to the agencies required to maintain public files under §601.4 (b).

The commentator notes that all aspects of the rule must be evaluated.

The committee agrees with this comment and notes that all aspects of the rule were evaluated in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997, and this was indicated in the proposed rule's preamble under the heading "REVIEW OF COMMITTEE RULES".

The commentator noted that the committee must do the cost-benefit analysis required by Chapter 2001 of the Texas Government Code.

The committee agrees with this comment and note that the preamble for the proposed rule clearly states the rulemaking is not subject to the four pertinent issues under §2001.0225. The required rulemaking cost analysis has been performed under the headings "FISCAL NOTE" and "PUBLIC BENEFIT" as required under §2001.024. The preamble for the proposed rule failed to identify the responsible committee officer who prepared the analysis. The "FISCAL NOTE" and "PUBLIC BENEFIT" discussions were prepared by Mary Ambrose, designated chairman of the committee.

#### STATUTORY AUTHORITY

These amended sections are adopted under Texas Water Code, §§26.401-26.407. Texas Water Code §26.406(d) provides the committee with the authority to promulgate rules defining the conditions that constitute groundwater contamination for the

purposes of inclusion of cases in the public files and the joint report.

#### §601.2. *Applicability.*

These rules specifically apply to each state agency or organization having membership on the committee. The committee is composed of the Texas Natural Resource Conservation Commission, the Texas Department of Health, the Texas Department of Agriculture, the Railroad Commission of Texas, the Texas Water Development Board, the Texas Alliance of Groundwater Districts, the Texas Agricultural Experiment Station, the Bureau of Economic Geology of the University of Texas at Austin, and the State Soil and Water Conservation Board.

#### §601.3. *Definitions.*

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

(1) Act—House Bill 1458 (71st Session) codified as Texas Water Code §§26.401-26.407.

(2) Commission—Texas Natural Resource Conservation Commission.

(3) Committee—Texas Groundwater Protection Committee.

(4) Documented groundwater contamination—A case of groundwater contamination where an agency has an established procedure for making a determination based on the quality of groundwater and the information pertinent to making the determination is maintained by the agency under §601.4 (b) of this title (relating to Public Files).

(5) Enforcement action—Any action of the agencies, identified in §601.2 of this title (relating to Applicability), which accomplishes or requires the identification, documentation, monitoring, assessing, or remediation of groundwater contamination.

(6) Groundwater—Water below the land surface in a zone of saturation.

(7) Groundwater contamination—The detrimental alteration of the naturally occurring physical, thermal, chemical, or biological quality of groundwater. Furthermore, groundwater contamination, for purposes of inclusion of cases in the public files and the joint groundwater monitoring and contamination report, shall be limited to contamination reasonably suspected of having been caused by activities or by entities under the jurisdiction of the agencies identified in §601.4 (b) of this title (relating to Public Files), except in the case of an underground source of drinking water granted an aquifer exemption by the commission with concurrence from the United States Environmental Protection Agency in accordance with 40 Code of Federal Regulations, Parts 144, 145, and 146, and 30 TAC Chapter 331 (relating to Underground Injection Control); and affecting groundwater which contains a concentration of:

(A) less than or equal to 10,000 milligrams per liter (mg/liter) of dissolved solids; or

(B) greater than 10,000 mg/liter if it is:

(i) currently extracted for beneficial use such as domestic, industrial, or agricultural purposes; or

(ii) hydrologically connected with, and with the potential for contaminant movement to, a surface water body or another zone of groundwater which has a concentration of less than or equal to 10,000 mg/liter of dissolved solids.

#### §601.4. *Public Files.*

(a) Subject to the limitations provided by the Texas Water Code, §§26.401-26.407 (the Act), and the Open Records Act, Texas Civil Statutes, Article 6252-17a, information collected, assembled, or maintained by the committee and the agencies having responsibilities related to protection of groundwater under the Act is public record open to inspection and copying during regular business hours.

(b) Each agency having the responsibilities related to the protection of groundwater under the Act shall maintain a public file of all documented cases of groundwater contamination that are reasonably suspected of having been caused by activities regulated by the agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 1998.

TRD-9813428

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 13, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 239-4640



## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System

#### Chapter 87. Deferred Compensation

##### 34 TAC §§87.1, 87.3, 87.5, 87.11, 87.15, 87.17, 87.21

The Employees Retirement System of Texas (ERS) adopts amendments to §§87.1, 87.3, 87.5, 87.11, 87.15, 87.17, and 87.21, concerning the deferred compensation plan. Sections 87.5 and 87.15 are adopted with changes to the proposed text as published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7172). Sections 87.1, 87.3, 87.11, 87.17, and 87.21 are adopted without changes and will not be republished.

These rules are being amended in order to reflect changes in federal law.

These rules allow deferred compensation funds to be placed in trust for the exclusive benefit of plan participants and beneficiaries.

One comment was received asking for clarification of the ownership of certain assets by the plan. The comment was received through a state legislator's office. The ERS agrees that further clarification is helpful and changes were made to §§87.5(e)(1), 87.5(l), and 87.15(g) to clarify the ownership of assets by the plan before January 1, 1999 and after December 31, 1998.

These rules are adopted under Government Code §609.508, which provides the board of trustees the authority to adopt any rules necessary to administer the deferred compensation program.

##### §87.5. Participation by Employees.

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

(e) Participants with existing life insurance products.

(1) This paragraph is effective until December 31, 1998. When a participant has deferrals and investment income in a life insurance product, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(2) This paragraph is effective January 1, 1999, and thereafter. When a participant has deferrals and investment income in a life insurance product, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(f) Normal maximum amount of deferrals.

(1) (No change.)

(2) The normal maximum amount of deferrals is equal to the lesser of \$8,000 (as periodically adjusted in accordance with Internal Revenue Code §457(e)(15)) or 33 1/3% of a participant's includible compensation. Mathematically, the preceding is equivalent to the lesser of \$8,000 (as adjusted) or 25% of the participant's gross income.

(3) (No change.)

(4) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of \$8,000 (as adjusted) or 25% of a participant's gross income is not exceeded. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken.

(A) Upon notification by the participant's agency, the vendor will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$8,000 (as adjusted) or 25% of the participant's gross income without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(g) Catch-up exception to the normal maximum amount of deferrals.

(1) - (7) (No change.)

(8) No participant shall be permitted to participate in any catch-up provision during or after the calendar year in which the participant reaches normal retirement age. If a participant makes deferrals in excess of the normal plan limits under the catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the vendor will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$8,000 (as adjusted) or 33 1/3% of includible compensation without any reduction for fees or other charges.

(B) (No change.)

(h) -(k) (No change.)

(l) Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Government Code and Internal Revenue Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Internal Revenue Code §§457(g) and 401(f). In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the State of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. Adoption of this rule shall constitute notice to vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(m) Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of a qualified vendor; or

(C) the plan administrator's initiation of a transfer in accordance with the sections in this chapter.

(2) (No change.)

(n) (No change.)

§87.15. *Transfers.*

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

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

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

(3) If a check is used to make a transfer, this paragraph applies.

(A) The qualified vendor must make the check payable to the State of Texas, or effective January 1, 1999, the trust, and promptly send the check to the plan administrator.

(B) - (E) (No change.)

(4) (No change.)

(e) Procedures for making a transfer of less than all deferrals and investment income from a qualified investment product.

(1) (No change.)

(2) If the plan administrator initiates a transfer, this paragraph applies.

(A) (No change.)

(B) The qualified vendor must make the check payable to the State of Texas, or effective January 1, 1999, the trust, and promptly send the check to the plan administrator.

(C) - (H) (No change.)

(3) If a participant initiates a transfer, this paragraph applies.

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

(C) After receiving notification of a transfer from the plan administrator, a qualified vendor shall issue a check payable to the State of Texas, or effective January 1, 1999, the trust, in an amount equal to the transfer. The vendor shall ensure that the plan administrator receives the check no later than the 30th day after the vendor receives notification of the transfer.

(D) - (F) (No change.)

(f) (No change.)

(g) Transfers into life insurance products.

(1) (No change.)

(2) This paragraph is effective until December 31, 1998. When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same vendor, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(3) This paragraph is effective January 1, 1999, and thereafter. When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same vendor, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(h) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 1998.

TRD-9813397

Sheila W. Beckett

Executive Director

Employees Retirement System

Effective date: September 10, 1998

Proposal publication date: July 10, 1998

For further information, please call: (512) 867-3336





# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part XX. Texas Workforce Commission

### Chapter 809. Child Care and Development

#### Subchapter A. General Provisions

##### 40 TAC §809.5

The Texas Workforce Commission (Commission) adopts new §809.5, concerning the State Advisory Committee on Child Care Programs with changes to proposed text as published in the June 12, 1998 issue of the *Texas Register* (23 TexReg 6184).

The purpose of the rule is to establish a 20 member advisory committee that shall advise the Commission in developing coordinated state policies for the use of federal and state funds in child care programs, pursuant to the provisions of the Texas Human Resources Code, Chapter 44, Subchapter C. The advisory committee shall review child care policies and programs for compliance with applicable guidelines and shall advise the Commission of the results of the review.

For the purpose of ensuring effective communication, the Commission made non-substantive changes to subsection (i), by adding the requirement that local workforce development boards be sent a copy of the State Advisory Committee's annual report.

The Commission received comments on the rule from local workforce development boards, an advisory committee member, and a resource center. Some commenters were for the rule, expressed concerns and had questions about the rule as proposed, and suggested changes.

The names of interested groups or associations offering comments on the rules are as follows:

West Central Texas Development Board;

An Advisory Committee Member;

The Connections Resource Center; and

The North Central Texas Workforce Development Board.

Following each comment or group of related comments is the Commission's response.

Comment: One commenter stated the advisory committee should also include employer representatives.

Response: Many of the appointees specifically required by statute are also employers. The Commission believes that the appointees required by the rule represent a balanced representation within the community, including employers, and believes the rule as stated follows the intent of the statute, which does not permit altering the specific balance of appointees.

Comment: One commenter stated she agrees with the proposed rule provisions except for the omission of the number of times the advisory committee should meet as a whole within a year's time, and added that she would like to see this included in the rule.

Response: The rule as proposed follows the intent of the statute. The Commission will strive to ensure the advisory committee meets as often as necessary to adequately perform

the functions required by statute; however, the Commission does not deem it necessary to set a fixed number of times for meeting within the text of the rule.

Comment: One commenter stated the rule was supported as written.

Response: The Commission acknowledges this comment.

Comment: One commenter reflected that since in many areas of the state the local workforce development boards are responsible for managing child care programs in their communities, she believed local workforce development boards should be considered a member of the "Child Care Management Services (CCMS) Advisory Committee" with voting authority. The commenter pointed out that local workforce development boards have child care expertise within their membership, and that significant input on child care issues at the local level would be missed without designated local workforce development board representation. As such, a local workforce development board representative should be inserted as a specific requirement under §809.5(c)(1-8).

Response: (Note: The above commenter uses the term "Child Care Management Services (CCMS) Advisory Committee" in referencing the proposed rule. Due to the context of the above comment, the Commission is interpreting the comment to reflect upon the proposed "Child Care State Advisory Committee" rule.)

The Commission fully intends to involve local workforce development boards in child care matters, and to seek out local workforce development board advice on child care issues. The provisions of the rule do not preclude specific committee appointees from also being members of local workforce development boards. The Commission believes that the local workforce development boards should be represented on the committee and amends the rule accordingly.

Comment: In reference to §809.5(h), in areas where local workforce development boards are responsible for child care planning, one commenter states local workforce development boards should hold public hearings as part of the annual planning process, not the advisory committee, and the advisory committee and Commission would then receive the outcomes of the meetings as part of the local workforce development board's child care plan.

Response: The statute specifically states the advisory committee shall hold public hearings. This however, does not preclude local workforce development boards from holding child care meetings as well, and submitting the results of these hearings to the Commission. Local workforce development boards are units of local government, and as such, their meetings fall under the provisions of the Texas Open Meetings Act. Therefore, the Commission does not deem it appropriate to incorporate the commenter's suggestion into the rule.

Comment: The same commenter proposed that if the advisory committee must hold the hearings, the hearings should be actively advertised to help insure that they are well attended, with several weeks of advance notice to all local workforce development boards, state agencies that provide child care for their clients, child care facilities, and the general public.

Response: The Commission agrees that the hearings are deserving of a high degree of publicity and hopes they will be well attended. The Commission will strive to ensure sufficient

advertisement will be utilized to inform all interested parties of the hearings; however, the Commission does not deem it necessary to add this specific requirement to the rule.

Comment: In reference to 809.5(i), one commenter asserted that all local workforce development boards should receive the annual report in addition to the Commission, as without access to this document, the local workforce development boards would lose a potentially valuable resource in their efforts to continually raise the quality of child care, and the commenter believes this to be an opportunity to solidify a link between the child care community and the local workforce development boards.

Response: The Commission agrees. The local workforce development boards will be sent the annual report, and the Commission will strive to ensure local workforce development boards are kept apprised of all other relevant data.

The new section is adopted under Texas Labor Code, §301.061 and §302.021, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs.

§809.5. *Child Care State Advisory Committee.*

(a) The Commission appoints the State Advisory Committee on Child Care Programs.

(b) The advisory committee shall consist of 20 members, not including ex officio members.

(c) The advisory committee appointees will be a balanced representation of:

- (1) parents, guardians, or custodians of children who use child care programs;
- (2) child care advocacy groups;
- (3) operators and providers of child care programs and services representing rural and urban communities;
- (4) for profit and nonprofit providers of child care services representing rural and urban communities;
- (5) experts in early childhood development and education;
- (6) experts in child health and nutrition;
- (7) other child care professionals;
- (8) the general public; and
- (9) ex officio representatives from each state agency, as determined by the Commission, that have an interest or role in state child care programs.

(d) At least one of the members of the committee, in addition to the qualifications required for that member, must represent a local workforce development board.

(e) The Commission shall provide staff support and other support necessary to the advisory committee to operate the committee.

(f) Subject to appropriations, the advisory committee may be reimbursed for travel expenses incurred while conducting the business of the board.

(g) The advisory committee shall advise the Commission in developing coordinated state policies for the use of federal and state funds in child care programs.

(h) The advisory committee shall review child care policies and programs for compliance with applicable guidelines and shall

advise the Commission on the results of the review in accordance with the Texas Human Resources Code, Chapter 44, Subchapter C, as amended.

(i) The Commission with the assistance of the advisory committee shall hold biennial public hearings on state and federal child care programs to elicit public response and recommendations regarding the quality, accessibility, and affordability of child care services. The hearings must be held in at least three separate geographical regions of the state and may be held in conjunction with other public hearings on child care held by the Commission.

(j) The advisory committee shall annually report its findings and recommendations to the Commission, and the local workforce development boards will be sent a copy of this report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 1998.

TRD-9813355

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: September 10, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 463-8812



## Subchapter E. Client Eligibility Process Requirements

### 40 TAC §809.93

The Texas Workforce Commission (Commission) adopts new §809.93, concerning the receipt of Texas Workforce Commission Applicant Child Care, with changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6185).

The purpose of the rule is to establish a priority for receiving child care subject to the availability of funds for individuals who need child care to accept employment, receive a referral from a Department of Human Services (DHS) Texas Works Advisor to attend a Workforce Orientation for Applicants, and secure employment prior to Temporary Assistance For Needy Families (TANF) program certification, pursuant to House Bill 1863, 74th Legislature, Regular Session.

For the purpose of clarity, the Commission made non-substantive changes to subsection (a), by deleting paragraph (2), which states that the client shall "reside in a county where Choices services are available" and renumbering the paragraphs accordingly.

The Commission also added a provision to subsection (c), which incorporates an element of good cause for voluntary terminations that occur within the 30 day period prior to receiving the referral from the Department of Human Services Texas Works Advisor to attend a Workforce Orientation for Applicants

The Commission received comments on the rule from a state representative, a workforce development board, an advisory committee member, and a resource center. Some commenters

were for the rule, expressed concerns and had questions about the rule as proposed, and suggested changes.

The names of interested groups or associations offering comments on the rules are as follows:

A State Representative;

An Advisory Committee Member;

The Connections Resource Center; and

The North Central Texas Workforce Development Board.

Following each comment or group of related comments is the Commission's response.

Comment: One commenter asserted that the receipt of Texas Workforce Commission Applicant Child Care appears to be in the best interest of children and parents at a time when child care is essential toward maintaining employment.

Response: The Commission acknowledges this comment.

Comment: One commenter stated providing child care services to individuals who apply for TANF benefits but choose to go to work prior to receiving TANF benefits is an excellent idea, and will enable local workforce development boards to be more responsive of families' efforts to become self-sufficient.

Response: The Commission acknowledges this comment.

Comment: One commenter asks if the Workforce Orientation for Applicants will be offered at times (e.g. evenings, early mornings, weekends ) convenient for individuals who apply for TANF but choose to go to work prior to receiving TANF benefits, as it would be unfortunate for individuals to lose work time in order to go to an orientation about finding and keeping jobs.

Response: The Commission agrees that offering the Workforce Orientation at times convenient for clients is important; however, because the orientation represents an eligibility requirement for TANF, and the client in the commenter's case has chosen employment, not TANF, the Commission does not deem it necessary to add such a requirement specifically to the rule. The Commission will continue to encourage local staff and local workforce development boards to offer a sufficient number of orientations for the number of applicants referred.

Comment: One commenter asks if an exception to the 30 day period will be made for individuals who have voluntarily quit employment due to child care difficulties?

Response: The Commission agrees that there are times when an individual's reason for quitting employment may need to be considered, and has incorporated a good cause statement in reference to voluntary terminations within the 30 day period prior to receiving the referral from the Department of Human Services Texas Works Advisor to attend a Workforce Orientation for Applications.

Comment: One commenter states that prohibiting child care for applicants when they are looking for employment prior to being certified for TANF is not supportive of the goal to keep applicants from following through with becoming TANF recipients, and that a period of 30 to 60 days of job search related child care should be made available for Applicant Child Care to assist and motivate parents to stay off TANF and find meaningful employment.

Response: The Commission is in favor of assisting parents to stay off of TANF benefits and find meaningful employment, but

does not deem it necessary to alter the rule as proposed for this reason. The period between applying for TANF benefits and certification for benefits is generally less than 30 days. Therefore, it would not be possible to provide "applicant child care" for a period as long as 60 days for an employment search. If employment is not secured by a TANF applicant prior to TANF certification, the applicant becomes a TANF recipient. As a TANF recipient, the individual is potentially eligible for child care as a Choices program participant.

Comment: One commenter points out that there are numerous legitimate reasons why an individual might voluntarily leave a paid leave position, such as unreliable child care, employer harassment or a family medical situation. The commenter believes individuals should not be penalized for leaving a position for any of these reasons, and that good cause for voluntarily leaving a position should be considered.

Response: The Commission agrees that there are times when an individual's reason for quitting employment may need to be considered, and has incorporated a good cause statement in reference to voluntary terminations within the 30 day period prior to receiving the referral from the Department of Human Services Texas Works Advisor to attend a Workforce Orientation for Applications.

The new section is adopted under Texas Labor Code, §301.061 and §302.021, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs.

*§ 809.93. Texas Workforce Commission Applicant Child Care.*

(a) Subject to the availability of funds, the Child Care Management Services Contractor shall provide Child Care for up to one year for individuals who meet the following criteria. The client shall:

- (1) need child care to accept employment;
- (2) receive a referral from the Department of Human Services Texas Works Advisor to attend a Workforce Orientation for Applicants;
- (3) locate employment prior to TANF certification; and
- (4) provide verification of a valid social security number.

(b) To receive Applicant Child Care, individuals shall also meet the requirements stated in the following sections:

- (1) Section 809.2 of this title (relating to the definition of Family Members);
- (2) Section 809.61(a) of this title (relating to Basic Requirements to Obtain Child Care Services from the Child Care Management Services (CCMS) System);
- (3) Section 809.65 of this title (relating to Eligibility Criteria for Commission Funded Child Care Services);
- (4) Section 809.67(a) of this title (relating to Income Limits for Child Care Services); and
- (5) Section 809.68 of this title (relating to Income Inclusions for Child Care Eligibility Determination).

(c) To receive Applicant Child Care, individuals shall not have voluntarily terminated paid employment of at least thirty hours a week within thirty days prior to receiving the referral from the Department of Human Services Texas Works Advisor to

attend a Workforce Orientation for Applicants, unless the voluntary termination was for good cause connected with the individual's work.

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 August 21, 1998.

TRD-9813329

J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

Effective date: September 10, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 463-8812



## Subchapter J. School-Linked Child Care Program 40 TAC §§809.201–809.205

The Texas Workforce Commission (Commission) adopts new §§809.201-809.205, School-Linked Child Care Program, regarding funding to be awarded by the Commission to school districts to provide for child care before and after school, as well as during school vacations and holidays.

Sections 809.201-809.205 are adopted without changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6186). Sections 809.201-809.205 will not be republished.

The purpose of the rules is to implement the statutory requirements for the School-Linked Child Care Program as found in Texas Education Code §33.902. The purpose of the program is to encourage school districts to provide child care to school age children before and after school, as well as during school vacations and holidays. The number of awards provided is limited by the amount of funds available to the Commission for this program. The Commission will strive to assure an equitable allocation of funds awarded under these rules between urban and rural areas of the state. The Commission will take into consideration whether or not a school district has been awarded funds under this program in the past, and may give preference to a school district which has not previously been awarded such funds.

New Subchapter J is adopted as the location for the School-Linked Child Care Program rules.

Section 809.201 explains the purpose of this subchapter.

Section 809.202 provides definitions of the terms used in this subchapter.

Section 809.203 lists some of the information which must be included by a school district in a response to a request for proposal issued by the Commission for funding through this program.

Section 809.204 describes the criteria which will be used by the Commission in awarding funds.

Section 809.205 lists the allowable uses of funds awarded.

The Commission received comments from three individuals and two groups which did not clearly state approval or disapproval of the rules but expressed concerns regarding some aspects

of the rules. Comments were received from Connections Resource Center, North Central Texas Workforce Development Board, and three individuals, including a Child Care Advisory Committee Member.

The Commission received the following comments concerning the proposed rules. Following each comment is the Commission's response.

**Comment:** One commenter suggested that the Commission allow Texas Education Agency approved/accredited private schools to apply for funds through the School-Linked Child Care Program.

**Response:** The Commission is not authorized to make the change requested. Texas Education Code §33.902(d) requires the Commission to distribute School-Linked Child Care Program funds to school districts.

**Comment:** One commenter suggested that the Commission support its request that the administration of the School-Linked Child Care Program be moved from the Commission to the Local Workforce Development Boards (boards).

**Response:** The Commission is not authorized to make the change requested. Texas Education Code §33.902 specifically states that the Work and Family Policies Clearinghouse has the responsibility for the distribution of School-Linked Child Care Program funds.

**Comment:** One commenter suggested that representatives of the boards be given an opportunity to participate in the development of the Request for Proposals for funding from the School-Linked Child Care Program.

**Response:** The Commission encourages input from affected parties in the development of Request for Proposals (RFPs). Of course, any entity participating in the development of an RFP is not eligible to respond to that RFP. Boards will be offered the opportunity to participate in the development of the RFPs for School-Linked Child Care in the future.

**Comment:** One commenter suggested that allocations of School-Linked Child Care Program funds should be based on a "fair share" formula which takes into consideration the poverty levels, population, and number of school age children located in the areas submitting proposals.

**Response:** One of the primary goals of this program is to meet the needs in the community for school age child care. Section 809.204(7) requires that a response to an RFP issued by the Commission for School-Linked Child Care include a description of the need in the community for school age child care and the resources available to meet that need. Bidders are asked to describe the need in their community for the proposed services, and the information provided is considered in the award process.

**Comment:** One commenter suggested that the criteria for selection of successful proposals from School-Linked Child Care Program funds should give preference to proposers who provide some type of reading instruction activities to children in the program.

**Response:** The Commission acknowledges the importance of reading programs and will work with the Texas Education Agency (TEA) to assure that information regarding TEA's statewide Reading Initiatives Program for school age children is made available to all interested bidders and providers under

this program. The Commission will work with contract providers under this program to establish or maintain reading instruction services.

Comment: One commenter suggested that the Commission consider multiple-year funding for programs which successfully provide quality care. The commenter stated that three years are required to establish a new program, and if the Commission funded new programs for three consecutive years that school districts would be more likely to be able to locate continued funding.

Response: The rules do not prevent bidders from responding to successive year RFPs. The rules provide that one of the criteria in making the awards is prior success of the bidder.

Comment: One commenter suggested that an additional requirement be added to any School-Linked Child Care Program request for proposals. Applicants should be required to strive to provide care which exceeds minimum child care licensing standards, and funding of subsequent years should be conditioned on the demonstrated ability or efforts to provide good child care.

Response: Every effort will be made to recognize and promote quality child care services in programs receiving funding. Two of the criteria in making the awards are prior success of the bidder in providing services and innovative uses of program funds. A bidder is required to provide information on its prior experience in providing child care services.

Comment: One commenter stated that child care providers in the Dallas area were concerned that the School-Linked Child Care Program would make an economic difference to their business because of the closing of the before and after school component of their program.

Response: School districts may choose to contract with private child care providers to provide services under this program. Since the grant is not intended for areas of the state where adequate school age child care services exist, it is not anticipated that the program would have a negative impact on existing providers.

The new rules are adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs, and under Texas Education Code §33.902 which requires that the Commission establish by rule procedures and eligibility requirements for distributing School-Linked Child Care Program funds to school districts.

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 August 19, 1998.

TRD-9813209

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: September 8, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 463-8812



# == 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 Department of Health

### Title 25, Part I

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Texas Board of Health as follows:

Subchapter A, Procedures and Policies, §§1.1 - 1.8;

Subchapter B, Formal Hearing Procedures, §§1.21 - 1.34;

Subchapter C, Fair Hearing Procedures, §§1.51 - 1.55;

Subchapter E, Use of Departmental Facilities by Public Health Related Organizations and Public Employee Organizations, §§1.71 - 1.74;

Subchapter F, Petition for the Adoption of a Rule, §1.81;

Subchapter I, Reimbursement Programs, §1.111;

Subchapter M, Payment of Franchise Taxes by Corporations Contracting with the Department or Applying for a License from the Department; §1.161;

Subchapter O, Procurement of Professional Services, §1.181;

Subchapter P, Complaints, §1.191;

Subchapter Q, Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons, §1.201 - 1.207;

Subchapter R, Standards for Conduct Governing the Relationship Between the Texas Department of Health and Private Donors and Private Organizations, §§1.221 - 1.228; and

Subchapter T, Failure to Pay Child Support, §1.301.

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the

rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Susan Steeg, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813498

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Subchapter D, State Employee Health Fitness and Education Programs, §§1.61 - 1.62; and Subchapter H, Public Health Promotion, §1.104. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Martin Powel, Disease Control and Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813462  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Subchapter G, Clinical Health Services, §1.91; and Subchapter J, Services to Disabled Persons, §1.121. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Martha McGlothlin, Health Care Delivery, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813463  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998

◆ ◆ ◆  
The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Subchapter H, Public Health Promotion, §1.101. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continues to exist. This assessment will be continued during the rule review process. The rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Lynn Denton, Division of Communications and Special Health Initiatives, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813464  
Susan K. Steeg  
General Counsel

Texas Department of Health  
Filed: August 24, 1998

◆ ◆ ◆  
The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Subchapter K, Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities, §§1.131-1.137. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Jayne Nussbaum, Environmental and Consumer Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813465  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998

◆ ◆ ◆  
The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Subchapter L, Medical Advisory Board, §1.151. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continues to exist. This assessment will be continued during the rule review process. The rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Bernie Underwood, Health Care Quality and Standards, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813466  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998





The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 1, Subchapter N, Personnel Policies and Procedures, §1.171. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continues to exist. This assessment will be continued during the rule review process. The rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Patsy Evans, Human Resources and Support, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813467  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 3, Memorandums of Understanding With Other State Agencies, §3.21. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Susan Steeg, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813499  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 3, Memorandums of Understanding with Other

State Agencies, §3.31. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continues to exist. This assessment will be continued during the rule review process. The rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Martin Powel, Disease Control and Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813468  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 3, Memorandums of Understanding with Other State Agencies, §3.41. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continues to exist. This assessment will be continued during the rule review process. The rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Ann Henry, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813469  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 24, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 14, County Indigent Health Care Program as follows:

- Subchapter A, County Program Administration, §§14.1-14.2;
- Subchapter B, Determining Eligibility, §§14.101-14.108;

Subchapter C, Providing Services, §§14.201-14.205;

Subchapter D, Case Management, §§14.301-14.302;

Subchapter E, SLIAG Reimbursement for County Indigent Health Care Program Services Provided to Eligible Legalized Aliens, §§14.401-14.406; and

Subchapter F, Advisory Committee, §14.501.

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Becky Brownlee, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813500

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 85, Community Health Services, §§85.11 - 85.14. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Herman Horn, Operations, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813501

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 229, Food and Drug:

Minimum Standards for Narcotic Treatment Programs, §§229.141-229.152;

Food Service Sanitation, §§229.161-229.173 (§§229.161-229.171, and 229.173 will be presented for final adoption of rules at the September 1998, Texas Board of Health meeting; §229.172 was not reviewed);

Regulation of Food, Drug, Device, and Cosmetic Salvage Establishments and Brokers, §§229.191-229.208;

Retail Food Store Sanitation, §§229.231-229.239 (§§229.231-229.239 will be presented for final adoption of rules at the September 1998, Texas Board of Health meeting);

Licensing of Wholesale Distributors of Drugs—Including Good Manufacturing Practices, §§229.251-229.255; and

Licensure of Device Distributors and Manufacturers, §§229.431-229.444.

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Jayne Nussbaum, Environmental and Consumer Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813517

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 265, General Sanitation, Texas Youth Camps Safety and Health, §§265.11-265.25. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Jayne

Nussbaum, Environmental and Consumer Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to inal adoption or repeal by the department.

TRD-9813518  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for re adoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 289, Radiation Control as follows:

Subchapter A, Control of Radiation, §§289.2 and 289.5;

Subchapter B, Memoranda of Understanding, §289.81; and

Subchapter C, Texas Regulations for Control of Radiation, §§289.101, 289.115, 289.125, and 289.127.

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Jayne Nussbaum, Environmental and Consumer Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813519  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for re adoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 295, Occupational Health: Hazard Communication, §§295.1-295.5, 295.7-295.8, and 295.10. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Jayne Nussbaum, Environmental and Consumer Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813520  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 25, 1998



The Texas Department of Health (department) will review and consider for re adoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 337, Water Hygiene: Design Standards for Public Swimming Pool Construction, §§337.71-337.96. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Jayne Nussbaum, Environmental and Consumer Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9813521  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 25, 1998



Public Utility Commission of Texas

### Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.106 relating to Selection of Telecommunications Utilities and §23.107 relating to Educational Percentage Discount Rates (E-Rates) pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 17709 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.106 and §23.107 and is proposing new §26.130 relating to Selection of Telecommunications Utilities, and new §26.216 relating to Educational Percentage Discount Rates (E-Rates) to replace these sections. The proposed repeals and new sections may be found in the Proposed Rules section of the *Texas Register*. As required by Section 167, the commission will accept comments regarding whether the

reason for adopting the rules continues to exist in the comments filed on the proposed new sections.

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 §23.106. Selection of Telecommunications Utilities.

16 TAC §23.107. Educational Percentage Discounts Rates (E-Rates).

TRD-9813272

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 1998



State Securities Board

**Title 7, Part VII**

The State Securities Board (Agency), beginning September 1998, will review and consider for readoption, revision, or repeal Chapters 101, General Administration; Chapter 103, Rulemaking Procedure; and Chapter 104, Procedures for Review of Applications, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature. The rules to be reviewed are located in Title 7, Part VII, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Rules Proposed" section of the Texas Register and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the Texas Register, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-9813427

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Filed: August 24, 1998



## Adopted Rule Reviews

Groundwater Protection Committee

**Title 31, Part XVIII**

The Texas Groundwater Protection Committee (committee) adopts the review of the following sections of 31 TAC Chapter 601, Subchapter A, concerning General Provisions relating to Public Files and Joint Report: §§601.1-601.5. The proposed review was published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6142).

The committee readopts the rules contained in 31 TAC Chapter 601, concerning the Groundwater Contamination Report, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. Rider 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedures Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. The committee has reviewed the rules in Chapter 601 and determined that the rules are still necessary because they provide the definitions and applicability for maintaining public files on groundwater contamination cases and contents of the annual Joint Groundwater Monitoring and Contamination Report required by Texas Water Code §26.406.

The commission concurrently adopts amendments to §§601.2-601.5 in the Adopted Rules section of this issue of the *Texas Register*. These changes are adopted as a result of the commission's review of the rules, and primarily address the committee's regulatory reform goals.

The comment period on the proposal and the review closed July 13, 1998. One comment was received during the readoption of the rules. These comments are addressed in the adopted rule preamble.

TRD-9813429

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: August 24, 1998



Texas Rehabilitation Commission

**Title 40, Part II**

The Texas Rehabilitation Commission adopts the following sections from Chapter 112, pursuant to the Appropriations Act of 1997, HB1, Article IX, Section 167. No comments were received regarding the readoption of these rules. The proposed review appeared in the July 24, 1998, issue of the Texas Register (23 TexReg 7600). The Texas Rehabilitation Commission is adopting the following sections without changes: 112.1 112.2 112.3 112.4 112.5 112.6 112.7 112.8 112.9

TRD-9813456

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Filed: August 24, 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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**PUBLIC UTILITY COMMISSION OF TEXAS**

**Figure: 16 TAC §26.130(d)(3)(A).**

Customer billing name: \_\_\_\_\_

Customer billing address: \_\_\_\_\_

Customer street address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Name of individual authorized to act for customer \_\_\_\_\_

Telephone number of individual authorized to act for customer: \_\_\_\_\_

By signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for the provision of (type of service(s) that will be provided by the new telecommunications utility) service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider designated above to effect the change.

I understand that I must pay a charge of \$\_\_\_\_\_ to my new telephone company to switch providers, and that if I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and that by signing below I indicate that I understand those differences (if any) and am willing to be billed accordingly.

I authorize (name of new telecommunications utility) to provide (type of service(s) that will be provided by the new telecommunications utility) to my telephone number(s) listed below, and no others.

**Figure: 16 TAC §26.130(d)(3)(A), continued.**

Telephone number(s) to be changed: \_\_\_\_\_  
\_\_\_\_\_

Initial here \_\_\_\_\_ if you are attaching a list of additional telephone numbers to be changed.

I certify that I have read and understand this Letter of Agency. I further certify that I am at least eighteen years of age, and that I am authorized to change telephone companies for services to the telephone numbers listed above.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**PUBLIC UTILITY COMMISSION OF TEXAS**

**Figure: 16 TAC §26.130(g)(3).**

**Selecting a Telecommunications Carrier -- Your Rights as a Customer.**

The Public Utility Commission of Texas has directed each telecommunications utility to provide this notice to customers regarding your rights when selecting a telecommunications utility. Telecommunications utilities (telephone companies) are prohibited by law from switching you from one telephone service provider to another without your authorization, a practice commonly known as "slamming."

If you are slammed, you should contact your new provider -- the telephone company that switched you without authorization -- and request that it return you to your original telephone service provider.

Texas law requires a local or long distance telephone service provider (telephone company) that has slammed you to do the following:

1. Return you to your original telephone company within three business days of your request.
2. Pay all the usual and customary charges associated with returning you to your original telephone company within three business days of your request to be returned to your original telephone company.
3. Provide all billing records to your original telephone company within seven business days of your request to be returned to your original telephone company.
4. Pay the original telephone company the amount paid you would have paid to your original telephone company if you had not been slammed.
5. Refund to you, within ten business days, any amount you paid over the amount that you would have paid for identical services by your original telephone company if you had not been slammed.



**Figure: 16 TAC §26.130(g)(3), continued.**

Please note that once your original telephone company has been paid by the slamming company, your original telephone company is required by law to provide you with all the benefits you would have normally received for your telephone use during the period in which you were slammed.

Complaints relating to slamming, the unauthorized change in a customer's telephone company, are investigated by the Public Utility Commission of Texas. If a telephone company slams you and fails to resolve your request to be returned to your original local or long distance telecommunications service provider as required by law, or if you would like a complaint history for a particular telephone company, please write or call the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Be advised that you may have additional rights under state and federal law. Please contact the Public Utility Commission if you would like further information about these additional rights.

Figure: 1 19TAC<\*>5.402(d)

Chart I - Institutions must select 36 semester credit hours of the core curriculum according to the parameters described below:

Component Area	Required Semester Credit Hours
Communication (English rhetoric/composition)	6
Mathematics (logic, college-level algebra equivalent, or above)	3
Natural Sciences	6
Humanities & Visual and Performing Arts Must include: Visual/Performing Arts Other (literature, philosophy, modern or classical language/literature and cultural studies*)	6 (3) (3)
Social and Behavioral Sciences Must include: U.S. History (legislatively mandated) Political Science (legislatively mandated) Social/Behavioral Science	15 (6) (6) (3)
Total Minimum Requirements	36

\* Humanities application of language skills includes a study of literature in the original language, and/or the cultural studies related to a modern or classical language.

Figure: 2 19TAC<\*>5.402(d)

Chart II - To complete the required 42-semester-credit-hour core curriculum, institutions shall select an additional 6 semester credit hours from one or more of the following:

Component Area	Possible Additional Semester Credit Hours (6 Total)
Communication (composition, speech, modern language communication skills*)	Up to 6
Mathematics (finite math, statistics, calculus, or above)	Up to 3
Natural Sciences	Up to 3
Humanities & Visual and Performing Arts (literature, philosophy, modern or classical language/literature and cultural studies**)	Up to 3
Social and Behavioral Sciences	Up to 3
Institutionally Designated Option (may include additional semester credit hours in the categories listed above, computer literacy, health/wellness, kinesiology, capstone or interdisciplinary courses, etc.	Up to 3
<b>Total Additional Hours</b>	<b>6</b>

\* **Communication** application of a modern language means the basic proficiency skills acquired during introductory courses and including a working competency in grammar, writing, speaking, and listening/comprehension in a foreign language.

\*\* **Humanities** application of language skills includes a study of literature in the original language, and/or the cultural studies related to a modern or classical language.

Figure: 43 TAC Section 57.36(a)

<u>Year</u>	<u>ATPA Funds (maximum)</u>	<u>Local Contribution (minimum)</u>
First	100%	0%
Second	100%	0%
Third	80%	20%
Fourth	80%	20%
Fifth	80%	20%

# 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, September 2, 1998, 3:00 p.m.

111 Congress Avenue Suite 1100

Austin

Ad Hoc Advisory Committee

EMERGENCY MEETING AGENDA:

Advise Board Chairman on committee nominations

Reason for emergency: This meeting is scheduled under sections 551.045 of the Open Meeting Action because conflicting schedules of the committee members require a meeting at this time for the committee's recommendations to be presented for evaluation before the Board meeting on September 17, 1998..

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: August 25, 1998, 3:44 p.m.

TRD-9813532

## **State Office of Administrative Hearings**

Tuesday, September 9, 1998, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, 11th Floor

Austin

Utility Division

AGENDA:

A pre-hearing conference will be held at the above date and time in SOAH Docket Number 473-98-1460--Application of Texas Utilities Electric Company to amend a certificate of convenience and necessity (CCN) to construct a proposed transmission line within Collin County (PUC Docket No. 19291)

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: August 25, 1998, 3:15 p.m.

TRD-9813530

## **Texas Department on Aging**

Tuesday, September 1, 1998, 10:00 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building, Room 4429

Austin

Board

AGENDA:

A. Call to order;

B. Discussion on possible action on Sunset Advisory Commission request/issues

C. Adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/424-6840.

Filed: August 24, 1998, 11:58 a.m.

TRD-9813450

## **Texas Department of Agriculture**

Tuesday-Wednesday, September 1-2, 1998, 1:00 p.m. and 8:00 a.m. (respectively.)

Ambassador Hotel, 3100 IH-40 West

Amarillo

Texas Wheat Producers Board

AGENDA:

Call to order and opening remarks

Action: March 31, 1998, year end financial report; audit report; minutes of May meeting; 1998 year-to-date financial report.

Report: Crop and weather reports; 2nd quarter collection and refund report; report from Texas Department of Agriculture; Master Marketers program.

Report and Action: USW Board of Directors Meeting; NAWG Summer Leadership Conference, Recess until Wednesday September 2, 1998

Call meeting to order and opening remarks

Report: NAWG CEO interviews; Master Marketers Program Review; Latin American Buyers Conf; TAMU Ag Finance Summit; Ntl. Assn. of Farmer Elected Committee-Men; Speaker Pete Laney Appreciation Dinner; Cong. Charles Stenholm Appreciation Luncheon; 1998 Big Country Wheat Conf; Silver Haired Legislators Orientation; Other Board Report and New Business; Past Quarter and Future Activities Report.

Action: Budget Amendment Requests-NAWG Non-Legislative Contract, Plot Drill for Use in Variety Trails, Five State Area Promotion Study, Elevator Statements.

Discussion: Biennial Election

Discussion and Action: Setting Date and Time for next meeting. Adjourn.

Contact: Rodney Mosier, 2201 Civic Center, Amarillo, Texas 79109-1853, 806/352-2191.

Filed: August 24, 1998, 11:32 a.m.

TRD-9813445

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## Texas Council on Alzheimer's Disease and Related Disorders

Thursday, September 17, 1998, 9:30 a.m.

Room 240, Mental Health Mental Retardation Center, 909 West 45th Street

Austin

AGENDA:

The council will meet to discuss and possible act on: approval of the minutes of the last meeting update on member terms; office information and referrals; Department of Human Services pilot project; Texas Council on Alcohol and Drug Abuse Memorandum of Understanding; Governor's Conference on Aging; continuing strategic planning from previous meeting; complete strategic planning; establishing a legislative subcommittee; legislative communications; report on potential grant opportunities; consideration and possible future conferences addressing Alzheimer's Disease and related disorders; and other business not requiring action.

Contact: Anne Williamson, 1100 East 49th Street, Austin, Texas 78756, 512/458-7324.

Filed: August 21, 1998, 2:05 p.m.

TRD-9813370

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## Texas Commission on the Arts

Wednesday, September 10, 1998, 10:30 a.m.

Corpus Christi Museum of Science and History, Water Garden Room, 1900 North Chaparral Street

Corpus Christi

Commission Meeting

AGENDA:

I. Call to order

II. Roll call

III. Public hearing

IV. Items for Commission Consent: A. Approval of minutes for May 28, 1998 Meeting; B. Installation of Officers; C. Reaffirm FY 99 Grants; D. State Arts Plan Revision; E. Financial Report; F. Panel Nominations Report; G. Other Business; I. Mid-America Arts Alliance Report

V. Items for Information Only: A. TCAnet Report; 1. Grants Management System; 2. Statewide Calendar of Events; B. Marketing Report; 1. Statewide Calendar of Events; 2. License Plate; A. USAA; b. Direct Mail; C. Arts Reach; 1. Revision of State Plan and Grant Application Procedures; 2. Appropriations; D. Philanthropy at the Crossroads Update; E. General Meeting Schedule; December 2nd and 3rd 1998 Beaumont; 2. March 3rd and 4th 1999 Austin; 3. June 2nd and 3rd Austin; F. Commission, Committee and Staff Rosters; G. Other Business.

VI. Adjournment

Contact: Betsy Smith, P.O. Box 13406, Austin, Texas 78711-3406, 512/463-5535, Ext. 42327.

Filed: August 20, 1998, 2:14 p.m.

TRD-9813278

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## State Bar of Texas

Friday, August 28, 1998, 8:30 a.m.

Sea Breeze Lodge, 118 Spy Glass Road, Treasure Island

Lake McQueeney

Texas Commission for Lawyer Discipline

AGENDA:

Public Session: Call to order/introductions/approval minutes.

Closed Session: Discuss appropriate action with respect to pending and potential litigation; pending evidentiary cases; special counsel assignments; review and discuss In Re: Hearing Before the District 4C Disciplinary Committee; and the performance of the General Counsel/Chief Disciplinary Counsel and staff.

Public Session: Discuss and authorize General Counsel to make, accept or reject offers or take other appropriate action with respect to matters discussed in closed session/Review, discuss and take appropriate action on: evaluation process of the General Counsel/Chief Disciplinary Counsel; Statistical and status reports on pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement; budget, operations, and duties of the Commission and the General Counsel's Office; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/Discuss issues affecting attorney discipline and disability with State Bar leadership and others/Discuss future meetings/Discuss other matters as appropriately come before the Commission/Public comment/Adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1/800/204-2222.

Filed: August 20, 1998, 3:33 p.m.

TRD-9813317

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## Texas Bond Review Board

Thursday, August 27, 1998, 9:00 a.m.

Clements Building, Committee Room #5, 300 West 15th Street

Austin

AGENDA:

I. Call to order

II. Consideration of issues-Midwestern State University Revenue Financing System, Texas Public Finance Authority Revenue Bonds, Series 1998

III. Adjourn

Contact: Jose A. Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, 512/463-1741.

Filed: August 19, 1998, 5:10 p.m.

TRD-9813219



### **Children's Trust Fund of Texas Council**

Wednesday, September 2, 1998,

8008 Cedar Springs, Houston Room, Main Terminal Building, Dallas Love Field

Dallas

Council

AGENDA:

Call to order, approval July 28, 1998 minutes

Discuss and take action: Council approval of amended grant funding for One Border Foundation for FY 1999; Revised 2000-201 Legislative Appropriations Request for include Sub-Strategies

Discuss and take possible action: Sunset Report Issues Draft

Set next board meeting date

Adjourn

Contact: Sara Winkler, 1884 State Highway 71 West, Cedar Creek, Texas 78612, 512/303-5061.

Filed: August 25, 1998, 4:23 p.m.

TRD-9813538



### **Council of Competitive Government**

Friday, September 4, 1998, 10:00 a.m.

Capitol Extension Building, Room E.2.018, 1100 Congress Avenue

Austin

Council

AGENDA:

1. call to order; 2. approval of April 28, 1998 Policy Work Group minutes. 3. approval of the June 17, 1998 Policy Work Group minutes; 4. discussion of proposed amendments to the CCG rules under Title 1 TAC, Part XVI, Chapter 401, suggested by the Contract and Rules Work Group. 5. Discussion of proposed new and amended CCG rules under Title 1, TAC, Part XVI, Chapter 401, concerning CCG policies and procedures; 6. review of publicity and informational material of the CCG; 7. discussion of suggested changes to the monthly status report. 8. open discussion; 9./ set date and time of next work group meeting; 10. adjournment

Contact: Michelle Gee, Council on Competitive government, 512/463-3387.

Filed: August 24, 1998, 10:30 a.m.

TRD-9813424



### **Office of the Court Administration**

Friday, September 25, 1998, 10:00 a.m.

Lieutenant Governor's Committee Room, Room 2E.20 State Capitol

Austin

Judicial Committee on Information Technology

AGENDA:

10:00 a.m. call meeting to order

1. Minutes from June 29, 1998 meeting

2. Approval of email/internet use policy for recommendation to courts

3. Legislative update

4. OCA update

5. Report on rural counties project: Professors Sandra Erdelez and Phillip Doty, University of Texas at Austin, Graduate School of Library and Information Science

6. Report on the Judicial Committee on Information Technology to the Supreme Court of Texas and the Texas Legislature

7. Subcommittee Reports

8. Review of Statutory Duties

9. New business

10. Public comment

Contact: Gareth Knowles, P.O. Box 12066, Austin, Texas 78711-2066, 512/463-4904.

Filed: August 24, 1998, 9:05 a.m.

TRD-9813414



### **Texas Court Reporters Certification Board**

Friday, August 28, 1998, 9:30 a.m.

205 West 14th Street, Suite 101, Tom Clark Building

Austin

Court Reporting School Curriculum Committee

AGENDA:

The Court Reporting School Curriculum Committee of the Texas Court Reporters Certification Board will meet to consider the following: call to order; discussion of chronology of Texas court reporting school curriculum approval process; discussion, consideration and possible action on checklist for program standards; discussion, consideration and possible action on approval status of Texas court reporting programs; discussion, consideration and possible action on application(s) for approval of a Texas education institutions; discussion, consideration and possible action on new committee members; review and possible action on general correspondence; set next committee meeting; and adjourn.

Person with disabilities who plan to attend this meeting and who may need auxiliary aids services or special accommodations are requested to contact Peg Liedtke at 512/463-1747 tow working days prior to the meeting so that appropriate arrangements can be made.



Contact: Peg Liedtke, 205 West 14th Street, Suite 101, Austin, Texas 78701, 512/463-1747.

Filed: August 20, 1998, 2:14 p.m.

TRD-9813279



## Texas Diabetes Council

Thursday, September 17, 1998, 9:00 a.m.

Moreton Building, Conference Room M-653, Texas Department of Health, 1100 West 49th Street

Austin

Industry Advisory Committee

### AGENDA:

The committee will meet to discuss and possibly act on: status report (pharmacological treatment algorithm for Type 2 Diabetes; exercise and nutrition algorithm, continuing medical education for physicians; and the diabetes tool kit); and public comments.

To request an accomodation under the ADA, please contact Suzanna C. Currier, ADA, Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days to the meeting.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7490.

Filed: August 26, 1998, 4:02 p.m.

TRD-9813619



Thursday, September 17, 1998, 9:00 a.m.

Moreton Building, Conference Room M-653, Texas Department of Health, 1100 West 49th Street

Austin

Managed Care Work Group Committee

### AGENDA:

The committee will meet to discuss and possibly act on: appointment of new chair and co-chair; status reports (pharmacological treatment algorithm for Type 2 Diabetes; exercise and nutrition algorithm, continuing medical education for physicians; and the diabetes tool kit); and public comments.

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 to the meeting.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7490.

Filed: August 26, 1998, 4:02 p.m.

TRD-9813620



## Texas Education Agency

Wednesday, September 9, 1998, 1:00 p.m.

Room 1-100, William B. Travis Building, 1701 Congress Avenue,

Austin

State Board of Education (SBOE) Ad Hoc Committee on Textbooks

### AGENDA:

The Ad Hoc Committee on Textbooks will meet to discuss the cost of Spanish language instructional materials and the recommended maximum costs established by the State Board of Education.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:41 a.m.

TRD-9813586



Wednesday, September 9, 1998, 3:00 p.m.

Room 1-104, William B. Travis Building, 1701 Congress Avenue,

Austin

Board

### AGENDA:

During the September meeting, the State Board of Education is scheduled to review applicants for possible approval to operate an open-enrollment charter school or an open-enrollment charter school to serve students at risk. Applicants for new open-enrollment charters will be available to answer questions from State Board of Education members in Room 1-104 from 3:00 p.m. to 6:00 p.m. No action will be taken on any issues.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:41 a.m.

TRD-9813587



Thursday, September 10, 1998, 9:00 a.m.

Room 1-100, William B. Travis Building, 1701 Congress Avenue,

Austin

State Board of Education (SBOE) Committee of the Whole

### AGENDA:

Public testimony; Commissioner's comments; Public hearing regarding instructional materials submitted for adoption by the State Board of Education under Proclamation 1996; Legislative recommendations for the 76th Texas Legislature; Report on the Texas Student Assessment Program; Discussion of Pending Litigation. This discussion will be held in Room 1-103 in executive session in accordance with the Texas Government Code, §551.071(1)(A), and will include a discussion of the following: (1) Angel G., et al v. Meno, et al, relating to students with disabilities residing in care and treatment facilities; (2) State of Texas v. United State of America relating to the Voting Rights Act and its applicability to the placement of masters in independent school districts; (3) Soccoro ISD, et al, v, State Board of Education relating to the technology allotment; (4) GI FORUM , Image de Tejas v. Moses, et al. Moses, et al. relating to the TAAS exit-level as a prerequisite for high school graduation; (5) Paul R. Brown, et al v. Honorable Dan Morales, et al. relating to investment of the Permanent School Fund; (6) litigation involving the award or denial of charters at the Board's March 1998 meeting; and (7) any other litigation arising after the date of posting for the meeting.

The Committee of the Whole will hold a public hearing regarding instructional materials submitted for adoption by the State Board of Education under Proclamation 1996. The committee will accept oral testimony regarding instructional materials offered for adoption.

Testimony at the hearing is limited to residents of Texas who filed requests to appear at the hearing on or before August 7, 1998, at 5:00 p.m. Publishing companies will be allowed time to respond to comments made at the hearing.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:41 a.m.

TRD-9813588



Thursday, September 10, 1998, 11:00 a.m.

Room 1-104, William B. Travis Building, 1701 Congress Avenue, Austin

State Board of Education (SBOE) Joint meeting of the Committee on Instruction and the Committee on School Finance/Permanent School Fund

AGENDA:

Public testimony; Consideration of an amendment to Proclamation 1996; Proclamation 1998 of the State Board of Education Advertising for Bids on Instructional Materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:41 a.m.

TRD-9813589



Thursday, September 10, 1998, 11:00 a.m.

Room 1-104, William B. Travis Building, 1701 Congress Avenue, Austin

State Board of Education (SBOE) Committee on Instruction

AGENDA:

Public testimony; consideration of an amendment to Proclamation 1996; Proclamation 1998 of the State Board of Education Advertising for Bids on Instructional Materials, Amendment to 19 TAC §§74.11(d)(9), 74.12(b)(11), and 74.13(a)(1)(K) possible addition to list of Speech courses; review of 19 TAC Chapter 89, Subchapter B, Adult Basic and Secondary Education; Review of 19 TAC Chapter 89, Subchapter C, General Education Development; Review of 19 TAC Chapter 89, Subchapter E, Migrant Education Program; Setting standards on the English II and U.S. History end-of-course tests.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:42 a.m.

TRD-9813590



Thursday, September 10, 1998, 11:00 a.m.

Room 1-111, William B. Travis Building, 1701 Congress Avenue, Austin

State Board of Education (SBOE) Committee on Planning

AGENDA:

Public testimony; review of proposed new 19 TAC Chapter 241, Principal Certificate; Review of proposed new 10 TAC Chapter 242, Superintendent Certificate; Review of proposed amendments to 19 TAC

Chapter 230, Subchapter V, Continuing Education; Review of 19 TAC Chapter 61, School Districts, Subchapter A, Board of Trustees Relationship; Update on approved open-enrollment charter schools and request for approval of charter amendments; Discussion of ongoing State Board for Educator Certification activities; Discussion of federal governmental relations activities; Status report on the accreditation, interventions, and sanctions of school districts and charter schools, Proposed selection of open-enrollment charter schools and open-enrollment charter schools to serve students at risk as defined by law by the Texas Education Code, §29.081.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:42 a.m.

TRD-9813591



Thursday, September 10, 1998, 11:00 a.m.

Room 1-100, William B. Travis Building, 1701 Congress Avenue, Austin

State Board of Education (SBOE) Committee on School Finance/Permanent School Fund

AGENDA:

Public testimony; Consideration of an amendment to Proclamation 1996; Proclamation 1998 of the State Board of Education Advertising for Bids on Instructional Materials; Approval of costs of administering the 1998-1999 Texas Assessment of Academic Skills (TAAS) and Texas end-of-course tests to private school students; Per capita apportionment rate for the 1998-1999 school year; School finance and appropriations update; Presentation by Citibank, N.A. on custodial and securities lending service provided to the Permanent School Fund; Proposed amendment to Chapter E of the Investment Procedures Manual of the Permanent School Fund relating to asset allocation rebalancing procedures; Approval of additional funds to the international equity portfolio of the Permanent School Fund; Review of Permanent School Fund securities transactions and the investment portfolio; Ratification of the purchases and sales to the investment portfolio of the Permanent School Fund for the months of June and July 1998; Report of the Permanent School Fund executive administrator; Authorization for the issuance of a request for proposal for outside legal counsel; Second quarter 1998 Permanent School Fund investment managers' performance report.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9701.

Filed: August 26, 1998, 11:42 a.m.

TRD-9813592



Friday, September 11, 1998, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 Congress Avenue, Austin

State Board of Education (SBOE)

AGENDA:

Invocation; pledge of allegiance; roll call; approval of May 8, 1998, and July 10, 1998, SBOE minutes; public testimony; Resolutions of the SBOE; Second quarter 1998 Permanent School Fund investment managers's performance report; Legislative recommendations for the 76th Texas Legislature; Consideration of an amendment to

Proclamation 1996; Proclamation 1998 of the State Board of Education Advertising for Bids on Instructional Materials; Amendment 19 TAC §§74.11(d)(9) 74.12 (b)(11), and 74.13 (a) (1)(K) possible addition to list of Speech courses; Setting standards on the English II and U.S. History end-of-course tests; Review of proposed new 19 TAC Chapter 241, Principal Certificate; Review of proposed new 19 TAC Chapter 242, Superintendent Certificate; Review of proposed amendments to 19 TAC Chapter 230, Subchapter V, Continuing Education; Update on approved open-enrollment charter schools and request for approval of charter amendments; Proposed section of open-enrollment charter schools and open-enrollment charter schools to serve students at risk as defined by law by the Texas Education Code, §29.081; Approval of costs of administering the 1998–1999 Texas Assessment of Academic Skills (TAAS) and Texas end-of-course tests to private school students; Per capita apportionment rate for the 1998–1998 school year; Proposed amendment to Chapter E of the Investment Procedures Manual of the Permanent School Fund relating to asset allocation rebalancing procedures; Approval of additional funds to the international equity portfolio of the Permanent School Fund; Ratification of the purchases and sales to the investment portfolio of the Permanent School Fund for the months of June and July 1998; Authorization for the issuance of a request for proposal for outside legal counsel; Information of agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, 512/463–9701.

Filed: August 26, 1998, 11:42 a.m.

TRD-9813593



## State Board of Educator Certification

Thursday, September 3, 1998, 9:00 a.m.

1001 Trinity, 5th Floor, Teacher Retirement System Building, Room 514

Austin

Board

### AGENDA:

1. call to order; 2. executive session-To interview candidates for the position of executive director; 3. reconvene in open session for further discussion and possible action involving the appointment, employment, or duties of a new executive director, pursuant to Tex. Gov't Code §551.074(a)(1); 4. Recess until 9:00 a.m., Friday, September 4, 1998.

Contact: Denise Jones, State Board for Educator Certification, Austin, Texas 512/469–3005.

Filed: August 25, 1998, 3:50 p.m.

TRD-9813534



Friday, September 4, 1998, 9:00 a.m.

1001 Trinity, 5th Floor, Teacher Retirement System Building, Board Room

Austin

Board

### AGENDA:

1. call to order; 2. executive session-executive director job vacancy; 3. reconvene in open session for further discussion and

possible action involving the appointment, employment, or duties of an executive director, pursuant to Tex. Gov't Code §551.074; 4. approval August 7, 1998, minutes; 5. executive director's update a. budget report; b. staff update; c. planning update; d. update on investigations; e. update on ASEP; f. other; 6. delegation of fiscal authority to the interim executive director; 7. receive report on accreditation ratings issued under the Accountability System of Educator Preparation (ASEP); 8. discuss and possibly act to amend the 1998–1999 fiscal year budget-grants for center for the professional development of teacher models to address teacher shortages in critical subject areas; 9. approve proposed drug-free workplace policy and awareness program; 10. propose new 19 TAC Chapter 250, Subchapter A §250.1 Relating to Historically Underutilized Business (HUB) Program; 11. Discuss and Possibly Approve Revisions to the Framework for Educator Preparation and Certification 12. Discuss Implications of the Recommended License Structure; 13. Adopt Visually Handicapped and American Sign Language (ASL) ExCET Tests and Approve Passing Standards 14. Propose Amendments to 19 TAC Chapter 230, Subchapter U, Assignment of Public School Personnel; 15. Approval Addition of Programs at Entities Currently Approved to Deliver Educator Preparation; 16 Discuss Proposed new 19 TAC Chapter 243 Emergency Certificates; 17. Propose New 19 TAC Chapter 249, Disciplinary Proceedings and Sanctions (including Enforcement of the Educator's Code of Ethics); Propose Amendments to 19 TAC §230.414, Certificates for Persons with Criminal Backgrounds.

Contact: Denise Jones, State Board for Educator Certification, Austin, Texas 512/469–3005.

Filed: August 25, 1998, 3:50 p.m.

TRD-9813535



## Advisory Commission on State Emergency Communications

Thursday, September 3, 1998, 1:30 p.m.

William P. Hobby Building, 333 Guadalupe Street, Room 1–1264

Austin

Poison Center Coordinator Committee Meeting

### AGENDA:

The Committee will call the meeting to order and recognize guests; hear public comment; hear reports; discuss and take committee action, as necessary; approval of June 16, 1998 minutes; subcommittee reports: A. report of the subcommittee on education; B. report of the medical directors subcommittee; C. report of the research subcommittee; D. report on the operations subcommittee; E. report on the Ad Hoc SPI subcommittee; Legislative Appropriations Request; Antidote Depots; Sunset Commission update; Antizol (Orphan Medical)-Letter of Support Requested; TPCN legal responsibility for child neglect/neglected cases and suicide callers; election of PCCC chair; miscellaneous; set next meeting date; adjourn.

Contact: Velia Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/305–6933.

Filed: August 21, 1998, 3:39 p.m.

TRD-9813393



## Fire Fighters' Pension Commission

Thursday, September 3, 1998, 9:00 a.m.

E.O. Thompson Building, First Floor, 910 Colorado Street  
Austin  
Administrative Division

AGENDA:

According to the complete agenda, the Board of Trustees will approve the minutes of the previous meeting, recess to Executive, assign committees, recess to committee meetings, hear presentation of consultant's report, and hear presentations from investment managers. Recess until Friday, September 4, 1998, at 9:00 a.m.

Contact: Morris E. Sandefer, P.O. Box 12577, Austin, Texas 78711-2577, 512/936-3372.

Filed: August 26, 1998, 1:20 p.m.

TRD-9813600



Friday, September 4, 1998, 9:00 a.m.

E.O. Thompson Building, First Floor, 910 Colorado Street  
Austin

Administrative Division

AGENDA:

According to the complete agenda, the Board of Trustees will hear presentations from the actuary and accountant, consider action on Committee recommendations, select an accounting service firm approve revised contract with Brandes Investment Partner, consider request for a tax qualification determination letter, hear professional services reports, approve proposed amendments to article 6243e.3, consider authorization request to supplement the Commissioner's salary based on performance evaluation, authorize Board attendance at the Commissioner's annual termination of contract with Sterling Information Services dates April 24, 1997, consider review and revision of the Board's ethics policy, hear staff reports, set date for next meeting and adjourn.

Contact: Morris E. Sandefer, P.O. Box 12577, Austin, Texas 78711-2577, 512/936-3372.

Filed: August 26, 1998, 1:20 p.m.

TRD-9813601



### Galveston Bay Etuary Program/TNRCC-GLO

Wednesday, September 2, 1998, 9:30 a.m.

2700 Bay Area Boulevard, Forest Room

Houston

Galveston Bay Council-Quarterly Meeting

AGENDA:

- A. Report of the Chairman
- B. Report of the Program Director
- C. Reports of Subcommittees and Task Groups
  - A. Partner's Progress Reports
  - B. Announcements

Contact: Marilyn Browning, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 7598, 281/316-3001.

Filed: August 20, 1998, 10:02 a.m.

TRD-9813247



### Texas Growth Fund

Tuesday, September 1, 1998 10:45 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

- 1. Review and approve minutes of the Special Meeting of the Board of Trustees held on May 11, 1998.
- 2. Receive nominations for a elect a Treasurer.
- 3. Review and approve Resolution designating signatories an checking accounts.
- 4. Review and approve Transfer Notices to replenish balances in checking accounts.
- 5. Review and approve invoice from Vinson and Elkins L.L.P.
- 6. Review and approve TGF Management Corp's Fourth Quarter 1998 Budget Request.
- 7. Review and approve proposed investment(s).
- 8. Review and approve Declaration of Trust establishing the Texas Growth Fund II-1998 Trust
- 9. Review and approve Management Agreement designating the Executive director of the 1998 Trust.
- 10. Review and approve Resolution authorizing the establishment of a checking account for the 1998 Trust.
- 11. Such other matters as may come before the Board of Trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, 512/322-3100.

Filed: August 24, 1998, 3:31 p.m.

TRD-9813476



### Texas Health Care Information Council

Friday, August 28, 1998, 8:00 a.m.

1100 West 49th Street, Room 653

Austin

Consumer Education Committee

AGENDA:

The Texas Health Care Information Council's Consumer Education Committee will convene in open session, deliberate, and possibly take formal action of the following items: (1) Approval of minutes for previous meetings; (2) Introduction of Robert Reid, M.D.; (3) TAC report-Quality Methods and Consumer Education TAC; (4) Staff report: Development of consumer education materials and media plan, including plans involving hospital and HMO/HEDIS data; (5) Recommendations to Council concerning consumer education/public information program contents and authorization of expenditures; (6) Public comments; (7) Set dates for future meeting(s); and, (8) adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas  
78751,512/424-6492 or fax 512/424-6491.  
Filed: August 20, 1998, 10:53 a.m.

TRD-9813254

Friday, August 28, 1998, 8:00 a.m.

1100 West 49th Street, Room 739

Austin

Hospital Discharge Data Committee

AGENDA:

The Texas Health Care Information Council's Hospital Discharge Data Committee will convene in open session, deliberate, and possibly take formal action of the following items: (1) Approval of minutes for previous meetings; (2) Recommendations concerning proposed amendments to hospital discharge data rule, 25 TAC §§1301.11-1301.19; (3) Data warehouse progress report- process flow, training, help training, held desk, compliance violations; (4) Appeals to Council for exemption from rules by hospitals (5) Discussion and recommendation concerning cases in which reporting entities are deemed to be out of compliance with Chapter 108, Texas Health and Safety Code, and associated rules (25 TAC §§1301.11-1301.19); (6) Operational definition of "substance abuse"; (7) Legislative recommendations concerning Chapter 108, Texas Health and Safety Code and other statutes; (8) TAC reports- Health Information Systems TAC and Peer Review and Provider Quality TAC; (9) Report from DATA Security and Confidentiality Task Force; (10) Public comments; (11) Set dates for future meetings; and (12) Adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas  
78751,512/424-6492 or fax 512/424-6491.  
Filed: August 20, 1998, 10:53 a.m.

TRD-9813252

Friday, August 28, 1998, 8:00 a.m.

1100 West 49th Street, Room 618

Austin

Non-Hospital Discharge Data Committee and Expanded Information Plan Committee

AGENDA:

The Texas Health Care Information Council's Hospital Discharge Data Committee will convene in open session, deliberate, and possibly take formal action of the following items: (1) Approval of minutes for previous meetings; (2) Updates: HEDIS data collection, analysis, and report; (3) Discussion and recommendation concerning cases in which reporting entities are deemed to be out of compliance with Chapter 108, Texas Health and Safety Code, and associated rules (25 TAC §§1301.31-1301.35; (4) TAC report-Health Maintenance Organization TAC and Medical Education Reimbursement TAC; (5) Recommendation to council on request by HMOs for exemption from rule; (6) Discussion and recommendation to Council concerning required HEDIS data elements and other information for calendar year 1998; (7) Public comments; (8) Set dates for future meetings; and (9) Adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas  
78751,512/424-6492 or fax 512/424-6491.

Filed: August 20, 1998, 10:53 a.m.

TRD-9813253

Friday, August 28, 1998, 10:00 a.m.

1100 West 49th Street, Room 739

Austin

Council

AGENDA:

The Texas Health Care Information Council will convene in open session, deliberate, and possibly take formal action of the following items: (1) Approval of minutes for previous meetings; (2) Presentation by Dr. Robert Reid; (3) Committee Report-Executive Committee, Consumer Committee, Non-Hospital Data and Extended Information Plan Committee (Designation of level of support for agency participation in fall conference for HMO's Appeals to Council for exemption from rules by health maintenance organizations; Discussion and recommendation concerning cases in which reporting entities are deemed to be out of compliance with Chapter 8, Texas Health and Safety Code, and associated rule, 25 TAC §§1301.31-1301.35), Appointments Committee, Data Security and Confidentiality Task Force, and Hospital Discharge Data Committee (Appeals to Council for exemption from rules by hospitals; Discussion and recommendation concerning cases in which reporting entities are deemed to be out of compliance with Chapter 108, Texas Health and Safety Code, and associated rules (25 TAC §§1301.11-1301.19), Operational definition of "substance abuse"); (4) Adoption of policy regarding use of tobacco products in Council offices; (5) Discussion and recommendation concerning adoption of General Service Commission's rules regarding Council's efforts to make good faith effort to increase purchases and contract awards to historically underutilized businesses; (6) Proposal of rules: (i) Agency receipt of gifts, (ii) By-laws relating to technical advisory committee, (iii) Modifications to 25 TAC §§1301.11-1301.19; (7) Amendment of THCIC By-laws to authorized Executive Director to enter into contracts for amounts not to exceed \$25,000 without prior authorization of Council (currently \$10,000 ) and to extend Executive Committee's approval authorization to \$50,000; (8) Legislative recommendation concerning Chapter 108, Texas Health and Safety Code and other statutes; (9) Authorization for expenditure of funds with Sherry Matthews agency relating to consumer education program activities; (10) Election of Council offices, per By-Laws; (11) Revision of maximum authorized amount for printing during current FY; (12) Executive Director's report; (13) Public comments; (14) Set dates for future meeting(s); and (15) Adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas  
78751,512/424-6492 or fax 512/424-6491.  
Filed: August 20, 1998, 10:53 a.m.

TRD-9813251

Tuesday, September 1, 1998, 1:00 p.m.

Brown-Heatly Building, Room 6302, 4900 North Lamar

Austin

Quality Methods and Consumer Education Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's Quality Methods and Consumer Education Technical Advisory Committee will convene in open session, deliberate, and possibly take formal action of the following items: Approval of minutes; staff report on consumer education projects; Discussion and set priorities for the 1999 fiscal year; Other business, and, Adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.

Filed: August 20, 1998, 10:53 a.m.

TRD-9813479



## Health and Human Services Commission

Thursday, September 10, 1998, 9:15 a.m.

Texas Department of Human Service, Public Hearing Room, 701 West 51st Street

Austin

Medical Care Advisory Committee

AGENDA:

Opening Comments; State Medicaid Director's Comments; Approval of Minutes; Medicaid Managed Care Report; Children's Health Insurance Program (CHIP) Update; Definition of Medically Necessary Health Services; Criminal History Check on Medicaid Providers and Provider Applicants; Proposed Repeal and New Rule Concerning Medicaid and Third Party Liability; Proposed Rule Amendment concerning Birthing Center Services; Repeal of Obsolete Rules; Information Item on New Rates for Medical Entral and Incontinent Care Supplies and Products; Open Discussion by Members; Next Meeting/Adjournment.

Contact: Steve Aragan, 701 West 51st Street, Austin, Texas 512/424-6569.

Filed: August 26, 1998, 10:42 a.m.

TRD-9813568



## Texas Higher Education Coordinating Board

Wednesday, September 9, 1998, 9:30 a.m.

Chevy Chase Office Complex, Building I, Room 1.100B, 7700 Chevy Chase Drive

Austin

Advisory Committee on Distance Education

AGENDA:

Review of summery of note of June 10, 1998, meting; Discussion on Institutional Plans from: Angelo State University, Panola College, Northeast Texas Community College and Western Texas College; and Discussion of Revision of Subchapter H.

Contact: Paul Meyer, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6200.

Filed: August 25, 1998, 11:32 a.m.

TRD-9813510



## Texas Department of Housing and Community Affairs

Saturday, August 29, 1998, 10:00 a.m.

507 Sabine Street, Room 437

Austin

Board Meeting

AGENDA:

The Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Fiscal Year 1999 Operating Budget; Fiscal Year 1999 Housing Finance Operating Budge; Executive Session Re: Personnel matters regarding duties and responsibilities in relationship to budget under §551.074, Texas Government Code Litigation and Anticipated Litigation (Potential or Threatened under §551.071 and §551.103, Texas Government Code Litigation Exception); Action in Open Session on Items discussed in Executive; and adjourn.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: August 20, 1998, 11:30 a.m.

TRD-9813265



## Texas Department of Human Services Region 6

Wednesday, September 9, 1998, 11:00 a.m. CST/10:00 a.m. MST

5425 Polk Street, Room 1E

Houston

Advisory Subcommittee on Services to Persons with Disabilities

AGENDA:

1. Welcome/Introductions. 2. Subcommittee Business: Bylaws Revision. 3. TDHS Programs Updates. 4. ADAC Agenda Review/Discussion. 5. TDHS Regional Updates. 6. OSPD Updates. 7. Public Comment/Consumer Input. 8. Adjournment.

Contact: Beverly Young, P.O. Box 149030, Austin, Texas 78714-9030, 512/438-3233.

Filed: August 25, 1998, 11:58 a.m.

TRD-9813515



## Texas Department of Insurance

Monday, September 21, 1998, 9:00 a.m.

Stephen F. Austin Building, 1701 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-1113.H Hearing in the Matter of All-Safe and Sound, Inc.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: August 26, 1998, 11:29 a.m.

TRD-9813581



Monday, September 21, 1998, 9:00 a.m.

Stephen F. Austin Building, 1701 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-0287.C To consider the application of Donald W. Parkinson, Tyler, Texas for a Life, Health, Accident and HMO License (formerly known as a Group I Legal Reserve Life Insurance Agent's License) to be issued by the Texas Department of Insurance (reset from July 7, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: August 26, 1998, 11:29 a.m.

TRD-9813582



Monday, September 21, 1998, 9:00 a.m.

Stephen F. Austin Building, 1701 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-1314.C To consider whether disciplinary action should be taken against Jose Cantu, Waller, Texas who holds a Local Recording Agent's License and a Group I Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: August 26, 1998, 11:29 a.m.

TRD-9813583



Wednesday, September 23, 1998, 9:00 a.m.

Stephen F. Austin Building, 1701 North Congress, Suite 1100

Austin

REVISED AGENDA:

Docket No. 454-98-0878.C To consider whether disciplinary action should be taken against Wayne Harland Creasy, Tulsa, Oklahoma, who holds a non-resident Group I Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: August 26, 1998, 11:29 a.m.

TRD-9813584



**Interagency Council on Autism and PDD**

Thursday, September 10, 1998, 8:45 a.m.

900 North Shoreline Drive (Omni-Bayfront)

Corpus Christi

AGENDA:

1. Approval of Bylaws
2. Election of Chairperson of FY99
3. Agency Reports
4. Proposal Presentations
5. Approval of Recommendation to Fund Proposal

6. Appointment of Advisory Task Force

7. Approval of Timetable for State Plan

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4535, (voice or Relay Texas), Bob Welsh, 72 hours prior to the meeting.

Contact: Bob Welsh, P.O. Box 12668, Austin, Texas 78711 512/206-4535.

Filed: August 25, 1998, 5:16 p.m.

TRD-9813546



**Texas Judicial Council**

Friday, September 18, 1998, 10:00 a.m.

Capitol Extension Building, Room E2.020

Austin

Committee on Judicial Selection

AGENDA:

- I. Commencement of Meeting
- II. Attendance of Members
- III. Overview of Background Resources
- IV. Discussion of Issues to be Addressed by Committee
- V. Invited and Public Testimony
- VI. Other Business
- VII. Date of Next Meeting (Calendar)
- VIII. Adjourn

Contact: Slade Cutter, Capitol Extension, Building, Room E2.020, Austin, Texas 78701, 512/463-1461.

Filed: August 21, 1998, 12:35 p.m.

TRD-9813366



**Texas Juvenile Probation Commission**

Tuesday, September 8, 1998, 1:00 p.m.

Brown-Heatley Building, Room 1420, 4900 North Lamar Boulevard

Austin

Juvenile Justice Alternative Education Program Standards

AGENDA:

Welcoming remarks; purpose of hearing; take public comments on the Official Texas Administrative Code, Title 37 (Public Safety and Corrections), Texas Juvenile Probation Commission, Chapter 348 Juvenile Justice Alternative Education Programs, Subchapters A and B.

Contact: Linda Brooke, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-6703.

Filed: August 24, 1998, 2:50 p.m.

TRD-9813471



**Texas State Board of Medical Examiners**

Thursday, August 20, 1998, 10:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Joint Meeting: Endorsement Committee and Examination Committee

**EMERGENCY REVISED AGENDA:**

Call to order and roll call; Executive session under the authority of the Open Meetings Act, section 5551.071 of the Government Code and Article 4495b, section 2.07(b) and 2.09(o), Texas Revised Civil Statutes, to consult with counsel regarding pending or contemplated litigation; Federation Credentials Verification Service; Letters of eligibility, section 3.04(g)(3) of the Medical Practice Act; Review of applications for licensure for a determination of eligibility referred to the committee by the Executive Director; Discussion/ information regarding recertification process of the American Board of Obstetrics/Gynecology; Discussion/information regarding Federation of State Medical Board June 1998 report on "Fraudulent and/or Substandard Foreign Medical Schools Report"; Discussion/action regarding section 3.03 "Reciprocal Agreements" of the Medical Practice Act; Executive sessions 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, and the Medical Practice Act, Article 4495b, Section 3.081, Texas Revised Civil Statutes.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: August 19, 1998, 2:31 p.m.

TRD-9813207



**Texas Medical Liability Insurance Underwriting Association**

Wednesday, September 23, 1998, 3:00 p.m.

5901 North IH-35, Embassy Suites Hotel

Austin

Executive Committee Meeting

**AGENDA:**

1. Review and possible action on Second Quarter 1998 Financial Statements and Budget.
2. Report on action taken by Policyholders Stabilization Reserve Fund Advisory Directors and action thereon.
3. Review and possible action on Proposal for Financial Audit For Year Ending December 31, 1998 submitted by KPMG Peat, Marwick.
4. Second Quarter 1998 Status Report concerning in-force policies.
5. Report on claims activities including status of mass litigation.
6. Report from Legal counsel.
7. Adjourn.

Contact: Joe Chilton, 505 East Huntland Drive, Suite 180, Austin, Texas 78752, 512/452-4370.

Filed: August 20, 1998, 11:05 a.m.

TRD-9813255



Thursday, September 24, 1998, 8:30 a.m.

5901 North IH-35, Embassy Suites Hotel

Austin

Board of Directors Meeting

**AGENDA:**

1. Approval of Minute 135 and Minute 136.
2. Review and possible action on Second Quarter 1998 Financial Statements and Budget.
3. Report on action taken by Policyholders Stabilization Reserve Fund Advisory Directors and action thereon.
4. Review and possible action on Proposal for Financial Audit For Year Ending December 31, 1998 submitted by KPMG Peat, Marwick.
5. Second Quarter 1998 Status Report concerning in-force policies.
6. Report on claims activities including status of mass litigation.
7. Report from Legal counsel.
8. Determine date and location for next meetings.
9. Discussion of arrangement's and preparation for Annual Meeting.
10. Adjourn.

Contact: Joe Chilton, 505 East Huntland Drive, Suite 180, Austin, Texas 78752, 512/452-4370.

Filed: August 20, 1998, 11:05 a.m.

TRD-9813256



Thursday, September 24, 1998, 10:00 a.m.

5901 North IH-35, Embassy Suites Hotel

Austin

Annual Meeting

**AGENDA:**

1. Appointment of a Credentials Committee to determine if a quorum is present.
2. Approval of Minutes of the Twenty Second Annual Meeting held September 10, 1997.
3. Chairman's Report
4. Secretary/Treasurer's Report.
5. General Manager's Report.
6. Election of Board of Directors.
7. Ratification of actions of the Board of Directors and all Committees of the Association for the year September 10, 1997 to September 24, 1998.
8. Adjournment.

Contact: Joe Chilton, 505 East Huntland Drive, Suite 180, Austin, Texas 78752, 512/452-4370.

Filed: August 20, 1998, 11:05 a.m.

TRD-9813257



Thursday, September 24, 1998, 11:00 a.m.

5901 North IH-35, Embassy Suites Hotel



Austin  
Board of Directors Meeting

AGENDA:

1. Election of Officers.
2. Appointment of Certified Public Accountants.
3. Appointment of Independent Actuary.
4. Appointment of Public Relations Representative.
5. Appointment of Counsel.
6. Establish Annual Expense Fee for Calendar year 1999.
7. Report from Chase Bank Representative
8. Adjourn.

Contact: Joe Chilton, 505 East Huntland Drive, Suite 180, Austin, Texas 78752, 512/452-4370.

Filed: August 20, 1998, 11:05 a.m.

TRD-9813258



**Texas Mental Health and Mental Retardation Board**

Thursday, September 3, 1998, 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

Planning and Policy Development Committee

AGENDA:

1. Citizens Comments
2. Presentation of the Results of the University of Texas Survey of Organizational Excellence
3. Update on the FY 98 Operating Plan
4. Legislative Update
5. Consideration of Approval of Proposed Legislative Initiatives
6. Consideration of Approval of Adoption of New Chapter 411, Subchapter D, Governing Administrative Hearings of the Department in Contested Cases, with the Contemporaneous Repeal of Chapter 403, Subchapter O, Governing the Same
7. Consideration of Approval of Adoption of New Chapter 417, Subchapter G, Governing Community Relations, with the Contemporaneous Repeal of Chapter 410, Subchapter B, Governing the Same
8. Consideration of Approval of Amendments to the Following Community MHMR Center Governmental Entity Plans as Related to the NorthSTAR Managed Care Behavioral Healthcare Program: Dallas County MHMR Center, Johnson/Ellis/Navarro Counties MHMR Center, Hunt County Family Services, Collin County MHMR Center
9. Consideration of Approval of Amendments to the Abilene Regional MHMR Center Governmental Entity Plan
10. Consideration of Approval of a Transmittal Letter and Authority to Transmit the report from the HB 1734 Committee to the Legislature
11. Consideration of Approval of Adoption of Amendments to §§412.353, 412.355-412.357, 412.359, 412.370, and 412.371 of

Chapter 412, Subchapter H, Concerning Standards and Quality Assurance for Mental Retardation Community Services and Supports.

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: August 26, 1998, 10:42 a.m.

TRD-9813569



Thursday, September 3, 1998, 11:00 a.m.

909 West 45th Street (Auditorium)

Austin

Audit and Financial Oversight Committee

AGENDA:

1. Citizens Comments
2. Quarterly Update on Community Center Performance
3. Audit Activity Update
4. Consideration of Approval of the FY 99 Budget for Internal Audit
5. Consideration of Approval of the FY 99 Audit Plan

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: August 26, 1998, 10:43 a.m.

TRD-9813571



Thursday, September 3, 1998, 1:30 p.m.

909 West 45th Street (Auditorium)

Austin

Business and Asset Management Committee

AGENDA:

1. Citizens Comments
2. Update on Real Property Transactions Previously Approved by the Boar: Implementation of the Asset Management Policy
3. Update on the Triangle Square in Austin, Texas
4. Consideration of approval to Raise funds to Construct a Quad Garden on the Campus of the Richmond State School
5. Consideration of Approval for the Construction of a Memorial Park on the Campus of the Abilene State School
6. Consideration of Acceptance of Donations in Excess of \$500 as follows: Volunteer Services Council for the Richmond State School-Electric Wheelchair, Non-electric Wheelchair, Recliner, and Speech Board Valued at \$5,200; Perryton Satellite Advisory Board-Minolta EP 2010 Copy Machine valued at \$3,795; Silk and Satin Bridal Creations-30 Formal Gowns and Dresses Valued at \$3,068; Six Flags Houston-40 Admission Tickets to Astroworld-Houston Valued at \$1,200; Mr. and Mrs. Robert Tyson-Housewares and Furniture Valued at \$800; Volunteer Services Council for Lubbock State School:

Flame Retardant Fabric Value at \$511.66; Four Hearing Aids Valued at \$900; Unlimited Projects, Inc. (UPI)-Vehicles, Yard and Janitorial Equipment Valued at \$81,488.26; Austin State Hospital Volunteer Services Council-\$30,000 to Convert the Garage of the Family House into an Additional All-purpose Room; Report of Perishable Donations Received Valued at \$500 or More; Citgo-275 Fiesta Texas Tickets Valued at \$9,075

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: August 26, 1998, 10:42 a.m.

TRD-9813570



Thursday, September 3, 1998, 2:30 p.m.

909 West 45th Street (Auditorium)

Austin

Medicaid Committee

AGENDA:

1. Citizens Comments
2. Update on the Implementation of the New Rate Setting Methodology
3. Review and Recommendation of Amendments to §355.755 of 1 TAC Chapter 355, Subchapter F, Governing Reimbursement Methodology for the Mental Retardation Local Authority (MRLA) Program
4. Review and Recommendation of Home and Community-based Services (HCS) Rates Effective September 1, 1998, through August 31, 1999
5. Review and Recommendation of Reimbursement Rates for the Mental Retardation Local Authority (MRLA) Program effective September 1, 1998, through August 31, 1999, and the Administrative Fee effective June 1, 1998 through August 31, 1998
6. Consideration of Approval of Adoption of New §409.069 of Chapter 409, Subchapter C, Governing Fraud Abuse and Recovery of Benefits

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: August 26, 1998, 10:43 a.m.

TRD-9813572



Thursday, September 3, 1998, 3:00 p.m.

909 West 45th Street (Auditorium)

Austin

Facilities Governance Committee

AGENDA:

1. Citizens Comments
2. Update on the State Hospitals Governing Body Meetings

### 3. Update on the State School Governing Body Meetings

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: August 26, 1998, 10:43 a.m.

TRD-9813573



Friday, September 4, 1998, 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

AGENDA:

- I. Call to Order-Roll Call
- II. Citizens Comments
- III. Approval of the Minutes of the July 10, 1998, Meeting
- IV. Issues to be Considered
  1. Chairman's Report

Consideration of Approval of a Resolution Honoring Rusk State Hospital

Consideration of Board Meeting Dates and Places for Calendar Year 1999

Status Update on the Commissioner Selection Process

2. Commissioner's Report

Medical Director's Report

Presentation of Quality Award

Additional items to be considered per attached agenda.

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: August 26, 1998, 10:42 a.m.

TRD-9813567



## Texas Municipal Retirement System

Thursday-Friday, September 17-18, 1998, 8:30 a.m.

Barton Creek Conference Center, 8212 Barton Club Drive

Austin

Workshop Meeting, Board of Trustees

AGENDA:

Workshop meeting for Board of Trustees and Staff to discuss goals, objectives, and strategies for the System and receive reports from Staff and consultants on current issues. No action will be taken on any item discussed during this meeting.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, 512/476-7577.

Filed: August 25, 1998, 8:16 a.m.

TRD-9813488

◆ ◆ ◆  
Saturday, September 19, 1998, 8:30 a.m.

Barton Creek Conference Center, 8212 Barton Club Drive

Austin

Regular Meeting, Board of Trustees

AGENDA:

To hear and approve minutes of the regular Board of Trustees meeting held June 19, 1998; review and approve Service Retirements. Disability Retirements: review and approve Supplemental Death Benefit payments; Consider Extended Supplemental Death Benefits coverage; Review and act on Financial Statements; Consider and act on resolution granting Distributive Benefits to annuitants and supplemental interest to certain funds and accounts: Receive report from Investment Advisor. Consider and act on selection of auditor for December 31, 1998, audit: Report by Director and Staff; Report by Actuary: Report by Legal Counsel: Consider any other business to come before the Board.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, 512/476-7577.

Filed: August 25, 1998, 9:17 a.m.

TRD-9813489

◆ ◆ ◆  
**Board of Vocational Nurse Examiners**

Monday-Tuesday, September 14-15, 1998, 9:00 a.m.

Hobby Building, Tower 2, Room 225, 333 Guadalupe

Austin

Board Meeting

AGENDA:

Monday, September 14, 1998-9:00 a.m.-call to order, introduction of new board member and all other members, introduction of new staff, approval of minutes, education report (program matters, program actions, meetings/seminars attended) unfinished business (budget hearing, TPAPN, delegate assembly, consolidation issue, executive director evaluation, board evaluation, school nurse, state health plan) executive director's report, new business (rule review of Chapter 239, rules committee meeting. Search Committee Report) Open forum to all interested parties an opportunity to address the Board 2:30-3:00 p.m., agreed order. Executive session in interview applicants for executive director position.

Tuesday, September 15, 1998-9:00 a.m.-Administrative hearings, recommendations of rules committee, any unfinished business and executive session to continue interview of applicants for executive director position.

Executive session on any of the agenda items authorized by Chapter 155 of the Government Code

Persons requiring reasonable accommodations are requested to contact Linda Rae Kent, 333 Guadalupe, Suite 3-400, Austin, Texas 78701, 512/305-8100 within 72 hours of the meeting to make appropriate arrangements.

Contact: Linda Rae Kent, 333 Guadalupe, Suite 3-400, Austin, Texas 78701, 512/305-8100.

Filed: August 25, 1998, 11:13 a.m.

TRD-9813504

◆ ◆ ◆  
**Texas Board of Orthotics and Prosthetics**

Thursday, September 3, 1998, 8:00 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

The board will introduce members, guests, and staff and will discuss and possibly act on: approval of the minutes of the July 15, 1998, meeting: adoption of board seal (colors); presiding officer's report; executive director's report; review, discussion, and action on comments received during the public comment period concerning proposed rules, as published in the July 24, 1998, issue of the Texas Register (23 TexReg 7489) relating to the regulation of orthotics and prosthetics (22 TAC, Chapter 821), implementing Senate Bill 291, 75th Texas Legislature, Regular Session, 1997; final adoption of proposed rules (22 TAC, Chapter 821) as published in the July 24, 1998, issue of the Texas Register (23 TexReg 7489); review of license application materials; other business not requiring board action; public comment; choosing future agenda items and setting future meeting dates 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: Donna Flippin or Steven Lowenstein, 1100 West 49th Street, Austin, Texas 78756, 512/834-4520.

Filed: August 21, 1998, 2:05 p.m.

TRD-9813369

◆ ◆ ◆  
**Texas Parks and Wildlife Department**

Saturday, August 29, 1998, 5:30 p.m.

Airport Hilton Hotel, Banquet Hall, 611 North Loop 410

San Antonio

Operation Game Thief Committee

AGENDA:

Members of the Operation Game Thief Committee will attend a dinner/fundraising meeting at 5:30 p.m. on Saturday, August 29, 1998. This is a social function to benefit the Operation Game Thief Fund and no formal action is planned. However, members of the Committee may discuss the program's operation.

Contact: Bill Harvey, 4200 Smith School Road, Austin, Texas 78744, 512/389-4433.

Filed: August 19, 1998, 3:07 p.m.

TRD-9813215

◆ ◆ ◆  
**Texas State Board of Pharmacy**

Friday, September 11, 1998, 1:00 p.m.

Stephen F. Austin, Building, 1700 North Congress, 11th Floor, Suite 1100

Austin

Disciplinary Hearing

AGENDA:

The State Office of Administrative Hearings will conduct a disciplinary hearing in the matter of: Richard Donnel Hackney, Pharmacist License #17657, Case #L-95-028.

Contact: Carol Fisher, 333 Guadalupe Street, 3-600, Box 21, Austin, Texas 78701-3942, 512/305-8000.

Filed: August 21, 1998, 10:33 a.m.

TRD-9813345



## Texas State Board of Podiatric Medical Examiners

Friday, August 21, 1998, 10:00 a.m.

333 Guadalupe Tower II, Room 400-A

Austin

EMERGENCY REVISED AGENDA:

Friday, August 21st, 1998, 10:00 a.m.-Discuss and take action regarding Cause No. 98-044420b; Gary J. Mellon, D.P.M. v. Texas State Board of Podiatric Medical Examiners and Allen M. Hymans, Executive Director, et al County Court at Law No. 2. of Dallas County, Texas, and Gary J. Mellon v. Texas State Board of Podiatric Medical Examiners, Allen M. Hymans, Cause No. 98-04303, in the 98th District Court of Travis County, Texas; The Board may go into executive session to seek advice of Boar counsel under Tex. Gov't Code Ann., Sec. 551.071, concerning any of the agenda items, including the foregoing emergency addition to the agenda.

Reason for emergency: The emergency addition to the agenda provided by this notice is authorized by Tex. Gov't Code Ann., Sec 551.045(b)(1) and (2). The Board must take immediate action concerning pending litigation and settlement possibilities, pursuant to a mediation order that was issued by the Court in which the lawsuit is pending. Further, the litigation currently pending involves whether a podiatrist whose license has been revoked will be permitted to practice podiatry in this state, raising the issue of imminent threat to public health and safety. It was not reasonably foreseeable that the Board would need to make decisions regarding settlement until Monday, August 17, 1998.

Contact: Janie Alonzo, P.O. Box 12216, Austin, Texas 78711-2216, 512/305-7000.

Filed: August 19, 1998, 5:10 p.m.

TRD-9813220



## Texas Public Finance Authority

Thursday, August 27, 1998, 12:30 p.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order

2. Consider and act upon a resolution establishing the terms of the Boar of Regents of Stephen F. Austin State University Revenue Financing System, Texas Public Finance Authority Revenue Bonds, Series 1998, approving a bond purchase contact, and approving or authorizing such other action relating thereto.

3. Consider and act upon a resolution establishing the terms of the Board of Regents of Midwestern State University Revenue Financing System, Texas Public Finance Authority Revenue Refunding and Improvement Bonds, Series 1998, approving a bond purchase contract, and approving or authorizing such other action relating thereto.

4. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Marce Watkins at 512/463-5544. Request should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: August 19, 1998, 2:31 p.m.

TRD-9813210



Friday, August 28, 1998, 12:30 p.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order

2. Consider and act upon a resolution establishing the terms of the Boar of Regents of Stephen F. Austin State University Revenue Financing System, Texas Public Finance Authority Revenue Bonds, Series 1998, approving a bond purchase contact, and approving or authorizing such other action relating thereto.

3. Consider and act upon a resolution establishing the terms of the Board of Regents of Midwestern State University Revenue Financing System, Texas Public Finance Authority Revenue Refunding and Improvement Bonds, Series 1998, approving a bond purchase contract, and approving or authorizing such other action relating thereto.

4. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Marce Watkins at 512/463-5544. Request should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: August 20, 1998, 8:28 a.m.

TRD-9813233



## Texas Department of Public Safety

Wednesday-Thursday, September 9-10, 1998, 10:00 a.m. and 9:00 a.m. (respectively.)

DPS Headquarters, Building A, 5805 North Lamar

Austin

Public Safety Commission

AGENDA:

Approval of minutes; public comment; budget matters; approval of fy99 operating budget; internal audit report; misc. and other unfinished business; open session for discussion and possible action regarding legal advice on pending and contemplated litigation, employment law, and personnel matter; Executive session to meet with attorneys to seek legal advice regarding pending and contemplated litigation, employment law, and personnel matter pursuant to Gov. Code Section 551.071; executive session to receive information from employees pursuant to Tx. Gov. Code Sec. 551.075; Open session to consider status of the purchase of real property and possible action; Executive session to consider status of the purchase of real property pursuant to the provisions of Tx. Gov. Code Sec. 551.072; Discharge appeal hearing of DPS employee Adrian Rivera; Action in discharge appeal hearing of DPS employee Jaime Adan Ballesteros.

Notice of Assistance: 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 Dorothy Wright at 512/453-3929 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Dudley M. Thomas, 5805 North Lamar Boulevard, Austin, Texas 78752, 512/424-2000, Ext. 3700.

Filed: August 21, 1998, 10:33 a.m.

TRD-9813346



**Public Utility Commission of Texas**

Monday-Tuesday, October 5-6, 1998, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project No. 16901, Numbering Plan Area Code Relief Planning for the 512 Area Code.

Contact: Dianne Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: August 21, 1998, 11:55 a.m.

TRD-9813362



**Railroad Commission of Texas**

Tuesday, September 1, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas 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 78711-2967, 512/463-7033.

Filed: August 21, 1998, 4:38 p.m.

TRD-9813400



Tuesday, September 1, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room 1-111

Austin

REVISED AGENDA:

According to the complete agenda, the Railroad Commission of Texas 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 78711-2967, 512/463-7033.

Filed: August 24, 1998, 12:13 p.m.

TRD-9813451



**Rio Grande Compact Commission**

Wednesday, September 9, 1998, 9:00 a.m.

US Army Corps of Engineers, 4101 Jefferson Plaza NE

Albuquerque, New Mexico

AGENDA:

Conduct business associated with the Rio Grande Compact Commission.

Contact: Herman, Settemeyer, P.O. Box 13087, Austin, Texas 78711, 512/239-4707.

Filed: August 21, 1998, 3:11 p.m.

TRD-9813390



**Rural Community Health System**

Wednesday, September 2, 1998, 6:00 p.m.

Davis and Wilkerson, P.C., 600 Congress Avenue, Suite 200

Austin

Executive Committee

AGENDA:

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463-0119.

Filed: August 26, 1998, 1:17 p.m.

TRD-9813598



**Texas Savings and Loan Department**

Wednesday, September 23, 1998, 9:00 a.m.

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

#### AGENDA

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from FirstCapital Bank, ssb, Victoria, Texas, to operate a branch office at 4201 South Alameda Street, Corpus Christi, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar, Suite 201, Austin, Texas 78705, 512/475-1350.

Filed: August 24, 1998, 11:38 a.m.

TRD-9813447



### School Land Board

Friday, August 28, 1998, 9:30 a.m.

Stephen F. Austin, Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board-Special Meeting

#### AGENDA:

Approval of previous board meeting minutes; consideration and approval of final comprehensive plan of review as submitted to the Texas Register of July 31, 1998; closed session and open session-consideration and approval of Paseo Del Este Contract, El Paso, County, closed session and open session-consideration and approval of proposed contingent royalty audit settlement between the General Land Office and Chevron, U.S.A., Inc., and consideration and possible action on settlement agreement, Keystone Field, Winkler County, Texas; closed session and open session-consideration and approval of settlement with Flag-Kerr McGee in Cause No. 93-011958 cited as Ladd Petroleum Corporation and Flag-Redfern Oil Company v. The State of Texas and the General Land Office; In the District Court of Travis County, Texas; 261st Judicial District which involves resolving issues of unpaid and underpaid royalty, penalty, and interest due the State as detected by the General Land Office staff; closed session and open session-consideration and approval of proposed settlement by Shell western Exploration and Production, Inc., to resolve claims for the underpayment of royalties; closed session and open session-pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, Stephen F. Austin, Building, 1700 North Congress, Room 836, Austin, Texas 78701, 512/463-5016.

Filed: August 19, 1998, 5:10 p.m.

TRD-9813218



Tuesday, September 1, 1998, 10:00 a.m.

Stephen F. Austin, Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

#### AGENDA:

Approval of previous board meeting minutes; open and consideration of bids received from the September 1, 1998, special oil and gas lease sale; pooling applications, A Resurrection (Wilcox 13,400), Lavaca Co.; Wildcat Field, Galveston and Chambers Counties; Umbrella Point W. (Lox B) Chambers Co.; Stratton Ridge and Wildcat Fields, Brazoria Co.; applications to lease highway rights of way for oil and gas, St. Hwy, 77, Lavaca Co.; FM 3456, Washington Co.; 14.95 acres, St. Hwy. 109, Washington Co.; Coastal public lands-commercial easement applications and renewals, Cedar Creek Bayou, Chamber Co.; Cow Bayou, Orange Co., Nassau Bay, Harris Co.; Clear Lake, Harris Co. Sabine Pass, Jefferson Co.; easement applications, renewals and amendments, San Bernard River, Brazoria Co.; Carancahua Bay, Calhoun Co.; Cold Pass, Brazoria Co.; Trinity Bay, Chambers Co.; structure cabin permit renewals, terminations, requests and amendments, Laguna Madre, Kleberg Co.; Laguna Madre, Nueces Co.; and Laguna Madre, Kenedy Co., closed and open sessions- consideration of Paseo Del Este contract, El Paso, Co.; closed and open sessions-consideration of action regarding the possible conveyance and acquisition of land in and around Eckert's Bayou, Galveston Co.; closed sessions-consideration and approval of additional tracts , terms and conditions for the October 6, 1998 oil and gas and other minerals lease sale, including, but no limited to, the S/2 State Tract 49, Corpus Christi Bay, Nueces Co.; in conjunction with F. Michael Speed, Receiver; closed and open sessions-status report on State of Texas et al v. Amoco Production Company, et al, Cause #95-08680, 345th Judicial District Court, Travis Co., Texas; closed and open sessions-consideration and approval of proposed contingent royalty audit settlement between the General Land Office and Chevron, U.S.A., Inc. and consideration and possible action on settlement agreement, Keystone Field, Winkler Co.; closed and open sessions-consideration and approval of settlement with Flag-Kerr McGee in cause no. 93-011958 cited as Ladd Petroleum Corporation and Flag Redfern Oil Co. v. The State of Texas and the General Land Office; In the District Court of Travis Co.; Texas; 261st Judicial District which involves resolving issues of unpaid and underpaid royalty, penalty, and interest due the state as detected by the General Land Office Staff; closed and open sessions-consideration and approval of proposed settlement by Shell Western Exploration and Production, Inc. to resolve claims for the underpayment of royalties; closed and open sessions-pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, Stephen F. Austin, Building, 1700 North Congress, Room 836, Austin, Texas 78701, 512/463-5016.

Filed: August 24, 1998, 4:25 p.m.

TRD-9813482



### Texas Senate

Thursday, October 15, 1998, 9:00 a.m.

Senate Chambers, State Capitol Building, 15th and Congress Avenue  
Austin

Long-Term Care Legislative Oversight Committee

#### AGENDA:

Purpose: The Long-Term Care Legislative Oversight Committee will meet to consider recommendations relating to charges by Lt. Gov. Bob Bullock and to take action as necessary. No public testimony will be taken.

Contact: Scott Caffey, P.O. Box 12068, Austin, Texas 78711, 512/463-3060.

Filed: August 24, 1998, at 3:30 p.m.

TRD-9813475

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**Structural Pest Control Board**

Thursday, September 10, 1998, 9:30 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.110

Austin

Regular Meeting

AGENDA:

- I. Approval of Board Minutes of July 28, 1998.
- II. Public Comment
- III. Possible Proposal of Amendments to §599.1. Termite Control
- IV. Update on Criminal Background Review Process.
- V. Review agreed Administrative Penalties and Consent Agreements.
- VI. Update on Borates
- VII. Discussion of Rule, Review, Chapters 591 and 593.
- VIII. Board Member Notebook.
- IX. Executive Director's Report
- X. Adjourn
- XI. Rule Review Committee will met upon Adjournment.

Contact: Benny Mathis, 1106 Clayton Lane, Suite 100 LW, Austin, Texas 78723, 512/457-7200.

Filed: August 24, 1998, 1:05 p.m.

TRD-9813453

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**Teacher Retirement System of Texas**

Thursday, August 27, 1998, 8:30 a.m.

1000 Red River, Room 229E

Austin

Board of Trustees Audit Committee

AGENDA:

1. Approval of minutes of the July 23, 1998, Audit Committee Meeting-Cummings
2. Discussion of Search Status for Director of Internal Audit-Cummings
3. Review Internal Audit Department Reports
  - a. Investment Process-Roden
  - b. Refunds-Oaks
  - c. Annuity Payroll Death Match Review-Stolp
  - d. Year 2000 Update-Morris
  - e. BeST Update-Morris
4. Discussion of 1998 Annual Financial Audit Plans-Roger Ferris, State Auditor's Office
5. Quarterly Report-Morris

a. Request from May 21, 1998, Audit Committee Meeting for Management Information on Chief Technology Officer Position and Management Costs Analysis on Long Distance Calls

b. Internal Audit Plan Status

c. Status of Audit Recommendations

6. Consideration 1998-1999 Internal Audit Plan-Morris

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 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: August 19, 1998, 5:10 p.m.

TRD-9813224

◆ ◆ ◆  
Thursday, August 27, 1998, 1:30 p.m.

1000 Red River, 5th Floor Board Room

Austin

Board of Trustees Benefits Committee

AGENDA:

1. Approval of minutes of the May 22, 1998, Meeting
2. Consideration of Appointments to the TRS Medical Board
3. Consideration of Change Order under the Benefit Services Transformation (BeST Project) Contract- Mrs. Koontz
4. Report on TRS-Care Insurance-Mr. DiLorenzo
5. Report on Legislative Meetings-Mrs. Featherston

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 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: August 19, 1998, 5:10 p.m.

TRD-9813226

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Thursday, August 27, 1998, 2:15 p.m.

1000 Red River, 5th Floor Board Room

Austin

Board of Trustees Investment Committee

AGENDA:

1. Approval of minutes of the May 21, 1998, Meeting
2. Discussion of Investment Summary Consideration of Recommendation for Allocation of Funds Available for Investment-Mr. Walker
3. Report on Asset Allocation, Policy Rangers, and Investment Performance-Mr. Walker.
4. Review of Equity Portfolio and Consideration of Equity Portfolio Strategy-Staff.
5. Review of Fix Income Portfolio, Cash Equivalents Portfolio, and Securities Lending-Mr. Walker.
6. Review of Real Estat Portfolio-Staff

7. Review of Alternative Assets Portfolio and Consideration of Commitment to the Texas Growth Fund, Phase III-Mr. Walker and Mr. Kozlowski

8. Review of Investment Outlook, Market Conditions and Portfolio Performance-Mr. Record, Wellington Management.

9. Report on Policy Exceptions and Proxy Exceptions-Mr. Walker

10. Consideration of Contractual Duties of Wellington Management-Mr. Record.

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 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: August 19, 1998, 5:10 p.m.

TRD-9813225



Friday, August 28, 1998, 8:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of minutes of the July 24, 1998, Meeting

2. Update on San Jacinto Tower Loan

3. Update on Portfolio, including Mortgage Risk Ratings, Issues Affecting Corporate-Owned Properties, and Information Relating to Report on Performance

4. Update on Strategic Planning and Engagement of Strategic Real Estate Consultant

5. Consideration of Real Estate Consultants, including Discussion Regarding the Expert Advice and Assistance Needed by the Committee and an Evaluation of the Renewal of the Engagement of Existing Real Estate Consultants.

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 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: August 20, 1998, 4:30 p.m.

TRD-9813319



Friday, August 28, 1998, 9:00 a.m.

1000 Red River, 5th Floor Board Room

Austin

Board of Trustees

AGENDA:

1. Roll Call of Board Members

2. Public Comments

3. Approval of minutes of July 24, 1998, Meeting

4. Consideration of Excusing Board Member's Absence From July 24, 1998, Meeting

5. Report of Real Estate Committee-Dr. Youngblood

6. Report on Audit Committee-Mr. Cummings

a. Consideration of 1998-1999 Internal Audit Plan

7. Report of Investment Committee to include the Consideration of Allocation of Funds Available for Investment-Mr. Simms

8. Consideration of Commitment to the Texas Growth Fund, Phase III-Mr. Walker

9. Technology Report-Mrs. Morgan and Mrs. George

a. Status Report on Benefit Services Transformation (BeST Project)

b. Year 2000 Status Report

c. Report on Backfile Conversion

10. Report of Benefits Committee-Mr. Whittenburg

a. Consideration of Change Orders under the Benefit Services Transformation (BeST Project) Contract

b. Consideration of Appointment to the Medical Board

11. Report of Chief Financial Officer-Mr. Jung

a. Report per Section 825.314(b) of the Government Code of Expenditures on Expenses that Exceed the Amount of Operation Expenses Appropriated and which are Required to Perform the Fiduciary Duties of the Board

b. Financial Reports on TRS Funds

12. Report on Benefits Division-Mrs. Koontz

a. Approval of Members Qualified for Retirement

b. Ratification of Minutes of Medical Board Meeting

c. Report of Status of Retired Payroll

d. Report of Texas Public School Employees Group Insurance Program

13. Report of Executive Director-Mr. Dunlap

14. Comments by Board Members

15. Report of General Counsel on Litigation-Mr. Baker

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 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: August 20, 1998, 4:30 p.m.

TRD-9813318



Tuesday, September 8, 1998, Noon

1000 Red River, Room 420E

Austin

Medical Board

AGENDA:

Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability who are due a re-examination report.



For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 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: August 19, 1998, 5:10 p.m.

TRD-9813425

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**Telecommunications Planning Group**

Friday, September 11, 1998, 10:00 a.m.

1400 Congress, Capitol Extension, Room E2.012

Austin

Committee

AGENDA:

Call to order, roll call and witness registration

1. Adopt June 26, 1998 meeting minutes
2. Addition of the Texas Municipal League and the Texas Association of Counties as Advisory Agency members. Discussion of Texas State Technical College as designated representatives for the junior and community colleges
3. Review Draft Telecommunication Planning Group Legislative Reports and final process for submission of the Report to the Legislature
4. Discuss Internet services: Policy Decision by TPG on whether Internet services are inter-city telecommunication services. Discussion on developing criteria for the TEX-AN Waiver Process
5. Update on Proposal to the Telecommunications Infrastructure Fund Board on the Education Infrastructure Proposal and the TEX-AN 2000 Process
6. Update of the DPS VSAT Request for Proposal Process
7. New Business
8. Next Meeting Agenda Items
9. Public Testimony

Contact: Martha Zottarelli, 300 West 15th Street, Suite 1300, Austin, Texas 78701, 512/475-2153.

Filed: August 24, 1998, 4:03 p.m.

TRD-9813480

◆ ◆ ◆  
**Texas Southern University**

Thursday, September 3, 1998, 10:00 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Academic Affairs Committee

AGENDA:

Meeting to consider: progress reports of academic activities and programs. Executive Session.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:45 a.m.

TRD-9813336

◆ ◆ ◆  
Thursday, September 3, 1998, 11:15 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Finance Committee

AGENDA:

Meeting to consider: matters relating to financial reporting system, and budgets; fiscal reports from the administration; investments, contract awards; informational items, resolution-authorizing the president's signature of the promissory note to the department of Education; Executive Session to consult with Attorney.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:45 a.m.

TRD-9813337

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Thursday, September 3, 1998, 12:30 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Development Committee

AGENDA:

Meeting to consider: Reports from the Administration of University Fund-Raising efforts.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:45 a.m.

TRD-9813338

◆ ◆ ◆  
Thursday, September 3, 1998, 1:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Student Services Committee

AGENDA:

Meeting to consider: progress reports to receive informational items. Executive Session to consult with Attorney.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:45 a.m.

TRD-9813339

◆ ◆ ◆  
Thursday, September 3, 1998, 2:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Personnel Committee

AGENDA:

Meeting to consider: Ratification of appointments of instructional personnel, academic personnel changes. Executive Session to consult with Attorney on issues of personnel.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:45 a.m.

TRD-9813340



Thursday, September 3, 1998, 3:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Litigation Committee

AGENDA:

Meeting to consider: Executive Session to consult with Attorney to discuss issues of the election of Chairman of the Board, personnel, litigation and real estate.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:46 a.m.

TRD-9813341



Thursday, September 3, 1998, 4:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Buildings and Grounds Committee

AGENDA:

Meeting to consider: Matters relating to facilities up keep; maintenance renovation and new facilities and plans; report from the administration; contract awards; information items; Executive Session to consult with Attorney.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:46 a.m.

TRD-9813342



Friday, September 4, 1998, 8:30 a.m.

3100 Cleburne, Robert J. Terry Library, 5th Floor

Houston

Board of Regents

AGENDA:

Meeting to consider: Election of chairman of the Board of Regents; Approval minutes; Report of the President; Report from Standing Committees; Executive Session to consult with Attorney on issues of litigation, personnel and real estate.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: August 21, 1998, 9:46 a.m.

TRD-9813343



## Texas Department of Transportation

Tuesday, September 1, 1998, 10:30 a.m.

125 East 11th Street, Second Floor, Dewitt C. Greer Building

Austin

Commission

AGENDA:

1. Executive session under Section 551.074, Government Code, to interview and discuss the appointment of director of the Texas Turnpike Authority Division.

2. Appointment of director of the Texas Turnpike Authority Division.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: August 24, 1998, 2:50 p.m.

TRD-9813472



Wednesday-Thursday, September 9-10, 1998, 9:00 a.m.

150 East Riverside Drive, Room 1B.1

Austin

Household Goods Carrier Advisory Committee

AGENDA:

Convene. Review and approval of minutes from August 3 and August 17, 1998 meeting. Discussion and recommendations for modernizing and streamlining department rules codified in Title 43, Texas Administrative Code, Chapter 18, Subchapters A, B, and E. Agenda and date of next meeting. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: August 20, 1998, 2:17 p.m.

TRD-9813289



Wednesday, September 23, 1998, 9:00 a.m.

150 East Riverside Drive, Room 1B.1

Austin

Household Goods Carrier Advisory Committee

AGENDA:

Convene. Review and approval of minutes from September 9-10, 1998 meeting. Discussion and recommendations for modernizing and streamlining department rules codified in Title 43, Texas Administrative Code, Chapter 18, Subchapters A, B, and E. Agenda and date of next meeting. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: August 20, 1998, 2:17 p.m.

TRD-9813288



## Texas Turnpike Authority

Tuesday, September 8, 1998, 9:30 a.m.

125 East 11th Street, First Floor

Austin

Board of Directors of the Texas Turnpike Authority Division

AGENDA:

Approval of minutes of July 28, 1998 meeting. Reports and discussions: status of board meeting in San Antonio; status of permanent Director; SH 130 freeway traffic volume report briefing; 183-A turnpike traffic volume report briefing, status of TTA rules publication; interim director's project status report; briefing on supplemental agreement w/Rust E&I. consider acceptance of the intermediate grade turnpike traffic and revenue study on 183-A. Consider acceptance of SH 130 Freeway Traffic Evaluation. Consider approval of Supplemental Agreements w/Rust E&I. Executive Session pursuant to Government Code, Chapter 551 (a) Section 551.071. Consultation with, and advice from legal counsel concerning pending/contemplated litigation, settlement offers and negotiations (b) Section 551.074. Personnel Matters, discuss the evaluation, designation, reassignment, and duties of personnel (c) Section 55.072. Deliberation Regarding Real Property, discuss of real property purchase, exchange, lease, donation.

Contact: Jerry McKenzie, 125 East 11th Street, Austin, Texas 78701, 512/936-0903.

Filed: August 26, 1998, 10:53 a.m.

TRD-9813575



## University of Houston System

Monday, August 24, 1998, 7:30 a.m.

4800 Calhoun, University of Houston, Room 220 E Cullen Building  
Houston

Special Called Board Meeting

AGENDA:

I. Board meeting-A) call to order; B) executive session; C) report from executive session; D) approval of minutes; E) report from executive committee;

F. Items forwarded from the August 3, 1998 executive committee meeting for board approval: 1. resolution in appreciation-Philip J. Carroll; 2. UHS Internal Auditing Department Long-Range Internal Audit Plan for Fiscal Years 1999-2001; G) Recess for Committee meetings

II. Academic and Student Affairs Committee-A) call to order; B) Items forwarded from the August 3, 1998 Executive Committee Meeting for Board Approval: 1. dismissal of Dr. Brian Middleditch, Professor Biochemistry, University of Houston; 2. math education institute transfer from UH-Victoria to University of Houston; 6. adjourn; C) adjourn; D) board approval of academic/student affairs committee report

III. Institutional Advancement and External Affairs Committee - A) call to order; B) report from August 3, 1998 Committee meeting: C) adjourn.

IV. Administration and Finance Committee-A) call to order; B) Items Forwarded from the August 3, 1998 Committee meeting for board approval: 1. campus master plan update; 2. design and construction of campus infrastructure improvements; 3. award of construction contract with way engineering for the capital renewal/deferred maintenance plumbing II package; 4. large overhead service electrical utility rate agreement with Houston Lighting and

Power; 5. appointment of DCW Architects, Inc., as Architect for the new policies; 6. appointment of Rey De La Reza Architects, Inc. as Architect for the Fine Arts Building Revocation; 7. Periodical subscription service with EBSCO Subscription Services, Inc. 8. Purchase Order with Blackwell North America for Approval Plan Services for the Library; 9. FY99 Maintenance Agreement Renewal with the Texas Department of Information Resources for Digital Equipment Corporation Software and Hardware; 10. award of construction contract with Don Krueger Construction Company for the University of Houston-Victoria Academic/Student Service Building; 11. Personnel recommendations, August 1998 for Executive Management Employees; 12. Insurance Premiums for Fiscal Year 1999; 13. Lease Agreement with Amagulf, ABC/Disney, Inc.; 14. Purchase of an NTSC Television Transmitter for KUHT; 15. Change Custodian for Collateral Pledged to Secure Deposits at Chase Bank of Texas; 16. Resolution Expressing Intent to Finance Expenditures Incurred or to be Incurred for University of Houston, and University-Victoria for the Facility at Fort Bend; 17. Banking Resolutions-Amendment to Banking Resolutions to Permit Transfers for Deferred Compensation Payments; 18. Resolution Governing the University of Houston Annual Giving Account at Universal Savings Bank in Milwaukee, Wisconsin; 19. Resolutions Governing the Establishment and Closing of Various Bank Accounts for University of Houston-Victoria. C) adjourn; D) board approval of administration and finance committee report

V. Reconvene Board of Regents Meeting

VI. Election of Officers

VII. Adjourn.

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas 77204-6732, 713/743-3444.

Filed: August 20, 1998, 9:55 a.m.

TRD-9813236



## University of North Texas/University of North Texas Health Science Center

Thursday, August 27, 1998, 1:30 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Role and Scope Committee

AGENDA:

UNT: Personnel Transactions; Supplemental Promotion/Tenure Recommendation; Tenure for New Faculty Appointee; Faculty on Modified Service; Small Class Reports, Summer I and II 1998; UNT Policy Manual; Resolution on Higher Education in Southern Dallas, Compliance Resolution.

UNTHSC: Health Science Center Manuals, Policies and Bylaws; Founders' Medal and Mary E. Luibel Distinguished Service Award; Faculty Development Leave; Request to Exceed the Full-Time Equivalent Limitation on Employees; Compliance Resolution; Update on AHEC Program; Update on Alzheimer's Project; Appointment of Assistance General Counsel.

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 10:29 a.m.

TRD-9813418

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Thursday, August 27, 1998, 1:30 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Budget and Finance Committee

AGENDA:

UNT: Internal Audit Plan; Investment Policy; Gift Report; Quarterly Investment Report; Investment Report Internal Audit Update.

UNTHSC: Internal Audit Plan; Gift Report; Investment Policy; Quarterly Investment Report; Investment Report Internal Audit Update.

UNT System: Statement Expressing Official Intent to Reimburse Costs of the University of North Texas/University of North Texas Health Science Center Project.

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 10:29 a.m.

TRD-9813419

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Thursday, August 27, 1998, 1:30 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Budget and Finance Committee

REVISED AGENDA:

UNT: Internal Audit Plan; Investment Policy; Gift Report; Quarterly Investment Report; Investment Report; Internal Audit Update.

UNTHSC: Internal Audit Plan; Gift Report; Investment Policy; Quarterly Investment Report; Investment Report; Internal Audit Update.

UNT System: Statement Expressing Official Intent to Reimburse Costs of the University of North Texas/University of North Texas Health Science Center Project.

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 11:43 a.m.

TRD-9813449

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Thursday, August 27, 1998, 3:30 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Facilities Committee

AGENDA:

UNT: Environmental Education, Science and Technology Building, University Center; Kerr Hall Building Repairs; Project Status Report; Fouts Field; CB Recommendations.

UNTHSC: Potential Purchase of Property; Leasing of Clinic Property; Amend Update of Master Plan; Project Status Report

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 10:29 a.m.

TRD-9813420

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Thursday, August 27, 1998, 3:30 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Advancement Committee

AGENDA:

UNT: Gift Report; Public Affairs Update; Athletics Update

UNTHSC: Gift Report; Media Update Publications.

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 10:29 a.m.

TRD-9813421

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Friday, August 28, 1998, 8:00 a.m.

Avenue C at Chestnut, Diamond Eagle Suite, University Union, University of North Texas

Denton

Board of Regents

AGENDA:

UNT: Call to Order; Approval of Minutes; Legislative Update; Compliance Plans; Access and Equity Update; Strategic Initiatives; Update on Searches for Deans; Recruitment/Retention; Radio Station Issues; Student Survey; Employee Advisory Council Proposal; Athletics Update; Legal Update; Including radio station contemplated litigation; Police Employee Matter; Appointment of Provost/EVP; Personnel Transactions; Supplemental Promotion/Tenure Recommendation; Tenure for New Faculty Appointee; Faculty on Modified Services; Small Class Reports; UNT Policy Manual; Resolution on Higher Education in Southern Dallas; Compliance Resolution; Internal Audit Plan; Investment Policy; Gift Report; Quarterly Investment Report; Environmental Education, Science and Technology Building; University Center; Kerr Hall Building Repairs; Project Status Report; Chancellor's Update on Renovation of Universities Center at Dallas.

UNTHSC: Call to Order; Approval of Minutes; Legislative Update; Compliance Plans; Access and Equity Update; Affiliations; Legal Update Research Employee Issue; Health Science Center Manuals; Policies and Bylaws; Founders' Medal and Mary E. Luibel Distinguished Service Award; Faculty Development Leave; Request to Exceed the Full-time Equivalent Limitation on Employees; Compliance Resolution; Internal Audit Plan; Gift Report; Investment Policy; Quarterly Investment Report; Amend Update on Master Plan; Project Status Report; President's Update on the Robert A. Welch Foundation establish Chair.

UNT System: Statement Expressing Official Intent to Reimburse Costs of the University of North Texas/University of North Texas Health Science Center Project; Election of Officers.

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 10:29 a.m.

TRD-9813417



Friday, August 28, 1998, 8:00 a.m.

Avenue C at Chestnut, Diamond Eagle Suite, University Union,  
University of North Texas

Denton

Board of Regents

REVISED AGENDA:

UNT: Call to Order; Approval of Minutes; Legislative Update; Compliance Plans; Access and Equity Update; Strategic Initiatives; Update on Searches for Deans; Recruitment/Retention; Radio Station Issues; Student Survey; Employee Advisory Council Proposal; Athletics Update; Legal Update; Including radio station contemplated litigation; Police Employee Matter; Appointment of Provost/EVP; Personnel Transactions; Supplemental Promotion/Tenure Recommendation; Tenure for New Faculty Appointee; Faculty on Modified Services; Small Class Reports; UNT Policy Manual; Resolution on Higher Education in Southern Dallas; Compliance Resolution; Internal Audit Plan; Investment Policy; Gift Report; Quarterly Investment Report; Environmental Education, Science and Technology Building; University Center; Kerr Hall Building Repairs; Project Status Report; Chancellor's Update on Renovation of Universities Center at Dallas.

UNTHSC: Call to Order; Approval of Minutes; Legislative Update; Compliance Plans; Access and Equity Update; Affiliations; Legal Update Research Employee Issue; Health Science Center Manuals; Policies and Bylaws; Founders' Medal and Mary E. Luibel Distinguished Service Award; Faculty Development Leave; Request to Exceed the Full-time Equivalent Limitation on Employees; Compliance Resolution; Internal Audit Plan; Gift Report; Investment Policy; Lump Sum Merit Pay, Quarterly Investment Report; Amend Update on Master Plan; Project Status Report; President's Update on the Robert A. Welch Foundation establish Chair.

UNT System: Statement Expressing Official Intent to Reimburse Costs of the University of North Texas/University of North Texas Health Science Center Project; Election of Officers.

Contact: Jana K. Dean, P.O. Box 311220, Dental Texas 76203, 940/369-8515.

Filed: August 24, 1998, 10:42 a.m.

TRD-9813448



## The University of Texas Health Center at Tyler

Thursday, September 3, 1998, Noon

Highway 271 @ Highway 155, Room 116, Biomedical Research Building

Tyler

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: August 21, 1998, 4:57 p.m.

TRD-9813409



## The University of Texas System

Tuesday, August 25, 1998, 4:00 p.m.

21st and San Jacinto Streets, Belmont Hall 718

Austin

U.T. Austin-Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order; II. Approval of Minutes of Previous Meeting. III New Business; IV. Announcement/Information Reports; V. Executive Session; Personnel Matter Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees-Section 551.074 of the Texas Government Code; and VI. Adjournment.

Contact: Jody Conradt, Belmont Hall, Room 718, Austin, Texas 787212-1286, 512/499-4402.

Filed: August 19, 1998, 2:53 p.m.

TRD-9813211



## Regional Meetings

Meetings filed August 19, 1998

Central Plains Center for MHMR & SA, Board of Trustee met at 208 South Columbia, Plainview, August 27, 1998, at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, 806/293-2636. TRD-9813217.

Central Texas Rural Transit District, Board of Director Budget Committee met at 1200 South Frio, Coleman, August 25, 1998, at 8:15 p.m. Information may be obtained from Sabrina Tibbetts, 1200 South Frio, Coleman, Texas 915/625-4167. TRD-9813206.

Education Service Center, Region XIII, Board of Directors met at 5701 Springdale Road-Room H, Austin, August 25, 1998, at Noon. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, 512/919-5301. TRD-9813223.

Education Service Center, Region XIII, Board of Directors met at 5701 Springdale Road-Room H, Austin, August 25, 1998, at 12:30 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, 512/919-5301. TRD-9813222.

Gonzales County Appraisal District, Appraisal Review Board met at 928 St. Paul Street, Gonzales, August 27, 1998, at 9:00 a.m. Information may be obtained from Brenda Downey, 928 St. Paul, Gonzales, Texas 78629, 830/672-2879 or fax 830/672-8345. TRD-9813216.

Lower Neches Valley Authority, Environmental and Saltwater Barrier Committee met at 7850 Eastex Freeway, Beaumont, August 24, 1998, at 10:00 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726-5117, 409/892-4011. TRD-9813228.

Lower Neches Valley Authority, Board of Directors met at 7850 Eastex Freeway, Beaumont, August 25, 1998, at 10:00 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726-5117, 409/892-4011. TRD-9813229.

San Jacinto River Authority, Board of Directors met at 2301 North Millbend Drive, The Woodlands, August 27, 1998, at 7:30 a.m.

Information may be obtained from James R. Adams/Ruby Shiver, P.O. Box 329, Conroe, Texas 77304, 409/588-1111. TRD-9813227.

South Texas Workforce Development Board met at 901 Kennedy Street, Zapata, August 27, 1998, at 6:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, 956/722-0546. TRD-9813231.

Trinity River Authority of Texas, Board of Directors met at 1700 University Avenue, Austin Hall, Sam Houston State University, Huntsville, August 26, 1998, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Austin, Texas 76004, 817/467-4343. TRD-9813205.

Van Zandt County Appraisal District, Appraisal Review Board met at West Highway 64, Canton, August 24, 1998, at 9:00 a.m. Information may be obtained from Brenda Barnett, West Highway 64, Canton, Texas 75103, 903/567-6171 or fax 903/567-6600. TRD-9813208.

Meetings filed August 20, 1998

Ark-Tex Council of Governments, Ark-Tex Private Industry Council Executive Committee Meeting met at Titus County Civil Center, Mt. Pleasant, August 27, 1998, at 9:30 a.m. Information may be obtained from Sharon Davis, P.O. Box 5307, Texarkana, Texas 75505, 903/832-8636. TRD-9813238.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors met at 226 Highway 132, Natalia, August 24, 1998, at 7:00 p.m. Information may be obtained from John Ward, 226 Highway 132, Natalia, Texas 78059, 830/665-2132. TRD-9813237.

Central Plains Center for MHMR & SA, Board of Trustees met in a revised agenda at 208 South Columbia, Plainview, August 27, 1998, at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, 806/293-2636. TRD-9813316.

Coryell County Appraisal District, Board of Directors met at 107 North 7th Street, Gatesville, August 27, 1998, at 6:00 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, 254/865-6593. TRD-9813276.

Education Service Center, Region X, Board of Directors met at 400 East Spring Valley Road, Richardson, August 26, 1998, at 1:15 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, 972/348-1000. TRD-9813264.

Education Service Center, Region XV, Board of Directors met at 612 South Irene Street, San Angelo, August 27, 1998, at 1:30 p.m. Information may be obtained from Clyde Warren, 612 South Irene Street, San Angelo, Texas 915/658-6571. TRD-9813320.

Edwards Aquifer Authority, Aquifer Management Planning Committee met at 1615 North St. Mary's, San Antonio, August 26, 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-9813323.

Edwards Aquifer Authority, Planning Committee met at 1615 North St. Mary's, San Antonio, August 26, 1998, at 3:30 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-9813326.

Edwards Aquifer Authority, Legal Committee met at 1615 North St. Mary's, San Antonio, August 28, 1998, at 10:00 a.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9813322.

Edwards Aquifer Authority, Finance Committee met at 1615 North St. Mary's, San Antonio, August 31, 1998, at 3:30 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-9813325.

Edwards Aquifer Authority, Administrative Committee met at 1615 North St. Mary's, San Antonio, August 31, 1998, at 2:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9813324.

Edwards Aquifer Authority, Executive Committee met at 1615 North St. Mary's, San Antonio, September 3, 1998, at Noon. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9813321.

Golden Crescent Workforce Development Board, Executive Committee met at 2401 Houston Highway, Victoria, August 25, 1998, at 3:00 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9813277.

Grande Parkway Association, Board of Director met at 4544 Post Oak Place, Suite 222, Houston, August 27, 1998, at 9:00 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77007, 713/965-0871. TRD-9813313.

Hall County Appraisal District, Appraisal District Directors met at 721 Robertson Street, Memphis, August 25, 1998, at 6:00 p.m. Information may be obtained from Anita Phillips, 621 Robertson Street, Memphis, Texas 79245, 806/259-2393. TRD-9813291.

Harris County Appraisal District, Board of Directors met at 2800 North Loop West, 8th Floor, Houston, August 26, 1998, at 9:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 920975, Houston, Texas 77292-0975, 713/957-5291. TRD-9813315.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, August 25, 1998, at 9:00 a.m. Information may be obtained from Pete Islas, 21001 North IH35, Kyle, Texas 78640, 512/266-2522. TRD-9813240.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, August 26, 1998, at 9:00 a.m. Information may be obtained from Pete Islas, 21001 North IH35, Kyle, Texas 78640, 512/266-2522. TRD-9813239.

Kendall Appraisal District, Board of Directors met at 121 South Main Street, Boerne, August 26, 1998, at 6:00 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, 830/249-8012 or fax 830/249-3975. TRD-9813314.

Liberty County Central Appraisal District, Board of Directors met at 315 Main Street, Liberty, August 26, 1998, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, 409/336-5722. TRD-9813327.

North Texas Local Workforce Development Board met at 4309 Jacksboro Highway, Suite 200, Wichita Falls, August 27, 1998, at Noon. Information may be obtained from Mona W. Statser, 4300 Jacksboro, Highway, Suite 200, Wichita Falls, Texas 76302, 940/322-5281 or fax 940/322-2683. TRD-9813267.

Panhandle Regional Planning Commission, Board of Directors met at 415 West 8th Avenue, Amarillo, August 27, 1998, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, 806/372-3381. TRD-9813248.

Region O, Regional Water Planning Group, Scope Revision Subcommittee Meeting met at 2930 Avenue Q, Board Room, Lubbock, August 25, 1998, at 9:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9813273.

Region O, Regional Water Planning Group, General Membership Committee met at 2930 Avenue Q, Board Room, Lubbock, August 28, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9813275.

Region O, Regional Water Planning Group, Scope Revision Subcommittee Meeting met at 2930 Avenue Q, Board Room, Lubbock, August 28, 1998, at 9:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9813274.

Sabine Valley Center, Finance Committee met at 107 Woodbine, Longview, August 27, 1998, at 5:45 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, 903/237-2362. TRD-9813293.

Sabine Valley Center, Care and Treatment Committee met at 107 Woodbine, Longview, August 27, 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-9813294.

Sabine Valley Center, Personnel Committee met at 107 Woodbine, Longview, August 27, 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-9813295.

Sabine Valley Center, Board of Trustees met at 107 Woodbine, Longview, August 27, 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-9813292.

Sharon Water Supply Corporation, Board of Director Meeting met at the Office, Route 5, Box 50361, Highway 37 South of Winnsboro, Winnsboro, August 24, 1998, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, 903/342-3525. TRD-9813266.

Texas Panhandle Mental Health Authority, Board of Trustees, TPMHR met at 1500 South Taylor Street, Amarillo, August 27, 1998, at 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, 806/349-5680 or fax 806/337-1035. TRD-9813328.

Meeting filed August 21, 1998

Alamo Area Council on Governments, Community Relations Committee met at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at 10:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813347.

Alamo Area Council on Governments, Alamo Area Housing Financing Corporation met at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at 11:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813351.

Alamo Area Council on Governments, Area Judges met at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at 11:30 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813348.

Alamo Area Council on Governments, Alamo Area Development Corporation met at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at Noon. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813349.

Alamo Area Council on Governments, Planning and Program Development Committee met at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at 12:15 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813350.

Alamo Area Council on Governments, Board of Directors met at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at 1:00 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813352.

Andrews Center, Board of Trustees met at 2323 West Front Street, Board Room, Tyler, August 27, 1998, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, 903/535-7338. TRD-9813335.

Angelina and Neches River Authority, ANRA Board of Directors met at ANRA Board Meeting Room, 210 Lufkin Avenue, Lufkin, August 27, 1998, at 10:00 a.m. Information may be obtained from Thomas D. Burr, P.O. Box 387, Lufkin, Texas 75901, 409/632-7795 or fax 409/632-2564. TRD-9813387.

Austin-Travis County MHMR Center, Finance and Control Committee met at 1430 Collier Street, Board Room, Austin, August 25, 1998, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9813333.

Bi-County Water Supply Corporation met at the Arch Davis Road FM 2254, Pittsburg, August 24, 1998, at 6:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 75686, 903/856-5840. TRD-9813391.

Bosque County Central Appraisal District, Board of Directors met at 202 South Highway 6, Meridian, August 27, 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-9813371.

Brazos Valley Council of Governments, Criminal Justice Advisory Committee met at 1905 Texas Avenue, Bryan, August 25, 1998, at 2:00 p.m. Information may be obtained from Linda McGuill, P.O. Drawer 4128, Bryan, Texas 77805-4128, 409/775-4244 Ext. 121. TRD-9813399.

Canyon Regional Water Authority, Budget Committee Meeting met at Green Valley Special Utility District, 529 South Center, Marion, August 27, 1998, at 1:00 p.m. Information may be obtained from Paul Taggart, 850 Lakeside Pass, New Braunfels, Texas 78130, 806/609-0543. TRD-9813385.

Central Texas Opportunities, Inc., Board of Directors Meeting met at 1200 South Frio, Coleman, August 25, 1998, at 7:00 p.m. Information may be obtained from Barbara M. Metcalf, P.O. Box 820, Coleman, Texas 76834, 915/625-4167. TRD-9813332.

Central Texas Water Supply Corporation, CTWSC Officers Meeting met at 4020 Lakecliff Drive, Harker Heights, August 25, 1998, at 1:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9813386.

Central Texas Water Supply Corporation, Monthly Meeting met at 4020 Lakecliff Drive, Harker Heights, August 25, 1998, at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9813330.

Dallas Area Rapid Transit, Audit met at 1401 Pacific Avenue, Conference Room B, First Floor, Dallas, August 25, 1998, at 10:30 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, 214/749-3256. TRD-9813404.

Dallas Area Rapid Transit, Project Management met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, August 25, 1998, at Noon. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, 214/749-3256. TRD-9813407.

Dallas Area Rapid Transit, Planning Meeting met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, August 25, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, 214/749-3256. TRD-9813406.

Dallas Area Rapid Transit, Committee of the Whole met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, August 25, 1998, at 4:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, 214/749-3256. TRD-9813403.

Dallas Area Rapid Transit, Board of Director's met at 1401 Pacific Avenue, Board Room, First Floor, Dallas, August 25, 1998, at 6:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, 214/749-3256. TRD-9813405.

Deep East Texas Council of Governments, East Texas Regional Water Planning Group RWPA "1" met at 200 North Fredonia, Nacogdoches, September 1, 1998, at 10:00 a.m. Information may be obtained from Van Bush, 274 East Lamar, Jasper, Texas 75957, 409/384-5704 or fax 409/384-5390, e-mail: vbush@iname.com. TRD-9813384.

Evergreen Underground Water Conservation District, Board of Directors met at August 26, 1998, at 10:00 a.m. Information may be obtained from Evergreen U.W.C.D., P.O. Box 155, Jourdanton, Texas 78026, 830/769-3740. TRD-9813392.

Gray County Appraisal, Board of Director met at 815 North Sumner, Pampa, August 26, 1998, at 7:30 a.m. Information may be obtained from Jennifer Read, P.O. Box 836, Pampa, Texas 79066-0836, 806/665-0791. TRD-9813331.

Lower Neches Valley Authority, Board of Directors met in a revised agenda at 7850 Eastex Freeway, Beaumont, August 25, 1998, at 10:00 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726-5117, 409/892-4011. TRD-9813334.

MHMR Authority of Brazos Valley, Board of Trustees met at 1504 Texas Avenue, Bryan, August 27, 1998, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77802, 409/822-6467. TRD-9813408.

Middle Rio Grande Development Council, Board of Directors Meeting met in a revised agenda at the Holiday Inn, Sage Room, 920 East Main, Uvalde, August 26, 1998, at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, 830/876-3533. TRD-9813396.

North Central Texas Council on Governments, Workforce Development Board met at 616 Six Flags Drive, Suite 300, 3rd Floor Board Room, Arlington, August 25, 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-9813395.

Nueces River Authority, Board of Directors Workshops and Meetings met at the Omni Marina Hotel, Riviera 2, 707 North Shoreline Boulevard, Corpus Christi, August 27, 1998, at 1:30 p.m. and at Texas A&M University-Corpus Christi, First Floor Conference Room, Natural Resources Center, 6300 Ocean Drive, Corpus Christi, August 28, 1998, at 8:30 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, 830/278-6810. TRD-9813388.

Nueces River Authority, Board of Directors met at the Texas A&M University-Corpus Christi, First Floor Conference Room, Natural

Resources Center, 6300 Ocean Drive, Corpus Christi, August 28, 1998, at 1:30 p.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, 830/278-6810. TRD-9813389.

Region O, Regional Water Planning Group, General Membership Committee met in a revised agenda at 2930 Avenue Q, Board Room, Lubbock, August 28, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9813394.

Riceland Regional Mental Health Authority, Finance/HR Committee Meeting met at 4910 Airport, Rosenberg, August 27, 1998, at 1:30 p.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 North Richmond Road, Wharton, Texas 77488, 409/532-3098. TRD-9813344.

South Plains Regional Workforce Development Board met at the Boardroom, Lubbock Chamber of Commerce, 1120 14th Street, Lubbock, August 27, 1998, at 3:00 p.m. Information may be obtained from Don McCullough, P.O. Box 10227, Lubbock, Texas 79408, 806/744-1987. TRD-9813363.

Upper Leon River Municipal Water District, Board of Directors met at the General Office, Located Off of FM 2861, Lake Proctor Dam, Comanche, August 24, 1998, at 6:30 p.m. Information may be obtained from the Upper Leon River MWD, P.O. Box 67, Comanche, Texas 76442, 254/879-2258. TRD-9813367.

Meetings filed August 22, 1998

Tech Prep of the Rio Grande Valley, Inc., Board of Directors met at the Best Western Palm Aire, 415 South International Boulevard, Weslaco, August 27, 1998, at Noon. Information may be obtained from Pat Bubb, Tech Prep of the Rio Grande Valley, Inc., TSTC Conference Center, Harlingen, Texas 78550-3697, 956/364-4512. TRD-9813410.

Meetings filed August 24, 1998

Austin-Travis County MHMR Center, Board of Trustees met at 1430 Collier Street, Board Room, Austin, August 27, 1998, at 1:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9813458.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Called Meeting Public Hearing met at 1124A Regal Row, Austin, August 27, 1998, at 3:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, 512/282-8441 or fax 512/282-7016. TRD-9813459.

Central Texas Council of Governments, Executive Committee met at 302 East Central Avenue, Belton, August 27, 1998, at 11:30 a.m. Information may be obtained from A.C. Johnson, 302 East Central Avenue, Belton, Texas 254/939-1801. TRD-9813457.

Education Service Center, Region III, Board of Directors met in a revised agenda at 1905 Leary Lane, Victoria, August 27, 1998, at 1:15 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573-0731. TRD-9813413.

Edwards Aquifer Authority, Executive Committee met at 1615 North St. Mary's Street, San Antonio, August 31, 1998 at Noon. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9813412.

Gillespie Central Appraisal District, Board of Directors, 101 West Main, Gillespie County Courthouse, Basement Suite 104C, Fredericksburg, August 27, 1998, at 8:00 a.m. Information may be obtained



from Wendy J. Garza, P.O. Box 429, Fredericksburg, Texas 78624, 830/997-9807. TRD-9813411.

Heart of Texas Region MHMR Center, Board of Trustees met at 110 South 12th Street, Waco, August 28, 1998, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, 254/752-3451, Ext. 290. TRD-9813422.

Hill Country Community MHMR Center, Board of Trustees met at 1105 Main Street, Bandera, September 1, 1998, at 10:30 a.m. Information may be obtained from Janis Beck, 1901 Dutton Drive, Suite D, San Marcos, Texas 78666, 512/558-2019. TRD-9813460.

MHMR Authority of Brazos Valley, Board of Trustees met in a revised agenda at 1504 Texas Avenue, Bryan, August 27, 1998, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77802, 409/822-6467. TRD-9813430.

San Jacinto River Authority, Region H Water Planning Group met at 300 West Davis, 6th Floor, Conroe, September 2, 1998, at 10:00 a.m. Information may be obtained from James R. Adams/Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, 409/588-1111. TRD-9813474.

Scurry County Appraisal District, Board of Directors met at 2612 College Avenue, Snyder, September 1, 1998, at 8:30 a.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, 915/573-8549. TRD-9813423.

Texas Community Centers Managed Care, Inc., Board of Directors met at 701 East 11th Street, Austin, August 28, 1998, at 8:30 a.m. Information may be obtained from Fred Bradley, 701 East 11th Street, Austin, Texas 78701, 512/794-9268. TRD-9813416.

Meetings filed August 25, 1998

Alamo Area Council of Governments, Board of Directors met in a emergency agenda at 118 Broadway, Suite 400, San Antonio, August 26, 1998, at 1:00 p.m. Reason for emergency: Applicant can not start job without board approval and is being fined \$500.00 per day. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225-5201. TRD-9813491.

Brazos River Authority, Management Succession Committee Board of Directors met at 1500 Broadway, Lubbock, September 3, 1998, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9813495.

Brazos River Authority, Management Succession Committee Board of Directors will meet at 18700 Kennedy Boulevard, Houston, September 8, 1998, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9813496.

Brazos River Authority, Management Succession Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, September 9, 1998, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9813497.

Education Service Center, Region XVI, Board of Directors met at 1601 South Cleveland, Regional XVI Education Service Center, Amarillo, August 28, 1998, at 1:15 p.m. Information may be obtained from Darrell L. Garrison, P.O. Box 30600, Amarillo, Texas 79120, 806/376-5521, Ext. 272. TRD-9813490.

Golden Crescent Workforce, Development Board, Welfare to Work Ad Hoc Committee met at 1502 East Airline, Suite 39, Victoria, August 31, 1998, at 3:30 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9813483.

Houston Galveston Area Council, Gulf Coast Workforce Development Board met in a revised agenda at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, September 1, 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-9813505.

Texas Community Centers Managed Care, Inc., Board of Directors met at 701 East 11th Street, Austin, August 28, 1998, at 8:30 a.m. Information may be obtained from Fred Bradley, 701 East 11th Street, Austin, Texas 78701, 512/794-9268. TRD-9813487.

Meetings filed August 26, 1998

Austin Transportation Study, Policy Advisory Committee Executive Committee met at the Municipal Annex Building, 301 West 2nd Street, Room 140, Austin, August 31, 1998, at 1:30 p.m. Information may be obtained from Michael R. Aulick, 301 West 2nd Street, Austin, Texas 78701, 512/499-2275. TRD-9813585.

Lubbock Regional MHMR Center, Board of Trustees met at 1692 10th Street, Board Room, Lubbock, August 31, 1998, at Noon. Information may be obtained from Tami Swoboda, P.O. Box 2828, 1602 10th Street, Lubbock, Texas 79408, 806/766-0202. TRD-9813545.

South Texas Workforce Development Board met at 901 Kennedy Street, Zapata, August 31, 1998, at 6:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, 210/722-0546. TRD-9813576.



# 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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## **Brazos Valley Council of Governments**

### **Request for Proposal (RFP) for Auditing Services**

DESCRIPTION: This request for auditing services is filed under the provisions of the Government Code, Chapter 2254.

The Brazos Valley Council of Governments (BVCOG), a regional planning commission, organized under Article 1101m, V.A.C.S., administering funds from local, state, federal governments, announces its request for proposal (RFP) to perform a Single Independent Audit in accordance with the office of Management and Budget (OMB) Circular A-133, for Fiscal Year 1998 (FY97), October 1, 1997 through September 30, 1998. The audit must be completed by January 31, 1999. Our FY97 single audit was performed by Pattillo, Brown & Hill, L.L.P. from Waco, Texas.

PERSONS TO CONTACT: Further information may be obtained from Dean McGee, Director of Administration or Tom Wilkinson, Executive Director, at the Brazos Valley Council of Governments, 1706 East 29th Street, P.O. Drawer 4128, Bryan, Texas 77805-4128 or by phone (409) 775-4244.

DEADLINE FOR SUBMISSION OF RESPONSE: Proposals are due on Monday, September 21, 1998 by 5:00 p.m. at the Brazos Valley Council of Government offices located at 1706 East 29th Street in Bryan, Texas.

EVALUATION CRITERIA: (1).Demonstrated Performance/Experience (2). Demonstrated Competence/Qualifications (3).Relevant Experience of Key Staff (4).Schedule Design (5).Meets BVCOG's Goals/Objectives/Includes Quality Control Procedures (6).Provides Quality Planned Follow-up Activity (7).Degree of Proposed Technical Assistance (8).Reasonableness of Cost (9).Cost Effectiveness (10).Costs: Necessary, Reasonable, Allowable & Allocable (11).Competitiveness of Costs (12).Value of in-kind services (13).HUB Status

GENERAL INFORMATION: BVCOG reserves the right to accept or reject any (or all) proposals submitted. BVCOG is under no legal requirement to execute a resulting contract, if any, on the basis of this advertisement and intends the material herein as a general description of the services desired by BVCOG.

The proposal should be for a period of one year although BVCOG will have the option of extending the contract for an additional two years.

FORM AND FORMAT: Six (6) copies of the proposal are requested and should be sent by mail, express service or delivered in person within the time frame specified in a sealed envelope marked "PROPOSAL FOR STATE AND FEDERAL GRANTS" addressed to Mr. Tom Wilkinson, Jr., Executive Director, Brazos Valley Council of Governments, P.O. Drawer 4128, Bryan, Texas 77805-4128. The proposal should be typed, preferably double spaced - minimum of 10 point font - on 8 1/2 inch by 11 inch paper with all papers sequentially numbered and bound together with binder clips. Proposals should include a letter of transmittal summarizing the proposal and a table of contents.

TRD-9813562

Tom Wilkinson, Jr.

Executive Director

Brazos Valley Council of Governments

Filed: August 26, 1998



## **Coastal Coordination Council**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of August 19, 1998, through August 25, 1998:

### **FEDERAL AGENCY ACTIONS:**

Applicant: Mariner Energy, Inc.; Location: The project is located in the Galveston Anchorage Area and Fairway, in Galveston Area, Block 151, offshore Texas, Gulf of Mexico; Project Number 98-0391-F1; Description of Proposed Action: The applicant proposes to install by jetting a 6-inch natural gas and condensate pipeline in the fairway and

anchorage area. The pipeline will connect the applicant's A1 platform and Samedan Oil's 6-inch pipeline in Block 151. The pipeline will be buried a minimum of 10 feet in the fairway and a minimum of 16 feet in the anchorage area. Approximately 16,300 cubic yards of material will be temporarily sidecast to the sides of the trench. Purpose of the work is to increase transportation of produced hydrocarbons from one to dual pipelines; Type of Application: U.S.C.O.E. permit application number 21382 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Lem York; Location: The project is located on Lots 5 and 6, on the east side of Sonny Lane, Ostermayer Subdivision, Galveston, Texas. The USGS Quad map is Lake Como, Texas; Project Number 98-0395-F1; Description of Proposed Action: The applicant proposes to fill a 0.55-acre borrow pit to level the location for construction of a single-family residence and excavate a 0.83-acre pond in a wetland area. Both wetland areas are adjacent to Galveston Bay. The borrow pit was dug in an upland area during the 1960's by a previous owner to obtain soil for use in constructing house foundations in the subdivision and has become naturalized over the years. The pit is approximately 3.5 feet deep and will be filled with material excavated to construct the pond. The proposed pond will be 80 feet wide, 150 feet long, and 8 feet deep. The pond will be used to culture aquatic species for personal use. Dominant plants in the two areas consist of coastal water-hyssop and California bulrush; Type of Application: U.S.C.O.E. permit application number 21397 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 Company; Location: The project is between Salt Bayou and Stubblefield Lake, approximately 1.5 miles north of the Turn of Oyster Creek, Brazoria County, Texas. The site can be located on the U.S.G.S. Oyster Creek, Texas, quadrangle map; Project Number 98-0396-F1; Description of Proposed Action: A notice of this project was previously issued under Department of the Army Permit Application SWG-98-26-032, but was withdrawn when it was determined that the wetlands proposed to be filled were not isolated wetlands. The applicant proposes to fill 1.27 acres of wetlands adjacent to Oyster Creek during construction of a 200-foot-square well pad with mud pits and a 20-foot by 1,337-foot access road. Construction of the access road would fill 0.35 acres of wetland with approximately 50 cubic yards of fill. Construction of the well pad would fill 0.92 acres of wetland with approximately 296 cubic yards of fill. The wetlands proposed to be filled are part of one plant community characterized by herbaceous wetland vegetation. The proposed well pad and access road are dominated by Gulf cordgrass and saltmeadow cordgrass. The applicant has not offered mitigation for the filling of wetlands. The proposed project site and the surrounding area have been used to pasture cattle. The purpose of the proposed project is to construct a site for the extraction of natural gas and to provide access to the extraction site; Type of Application: U.S.C.O.E. permit application number 21394 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Friendswood Land Development Company; Location: The project is a 90-acre tract within a portion of the Pine Brook Subdivision in Clear Lake City. The site is located northwest of the intersection of Clear Lake City Boulevard and Middlebrook Drive in Harris County, Texas. The proposed mitigation site is located west of Armand Bayou, between Genoa-Red Bluff Road and Fairmont Parkway, in Harris County, Texas; Project Number 98-0397-F1; Description of Proposed Action: The applicant proposes to fill 1.0 acre of wetlands for the development of a 234-lot residential section. A nationwide Permit 26 was issued to authorize fill activities in other sections of the Pine Brook Subdivision. Therefore, this request will

be processed as an individual permit. Approximately 800 cubic yards of soil from the project site would be placed in the wetland areas. As mitigation for the impacts to the wetlands, the applicant proposes to construct a 2.0-acre mitigation site to the west of Armand Bayou. The proposed 2.0-acre mitigation site will be south of and adjacent to a 2.75-acre prairie restoration project currently under construction on this same tract; Type of Application: U.S.C.O.E. permit application number 21355 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Brown & Root Energy Services; Location: The project is located on Greens Bayou, between Corps of Engineers Stations GB 75 + 50 to GB 77 +20 on the south side of the channel. The Brown and Root facility is located at 14035 Industrial Road, in Houston, Harris County, Texas; Project Number 98-0405-F1; Description of Proposed Action: The applicant proposes to fill in a slip to provide additional area for fabrication of offshore structures. This slip was previously excavated to allow barges to be pulled and structures loaded out. The slip is 170 feet wide and 450 feet long with an average depth of 16 feet. Approximately 54,000 cubic yards of concrete rubble, sand, and clay would be used to fill the slip. All of these fill materials would be from on-site supplies. Concrete rubble and riprap would be installed at the mouth of the slip instead of a bulkhead; Type of Application: U.S.C.O.E. permit application number 21362 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

#### FEDERAL AGENCY ACTIVITIES:

Applicant: Corps - Saltwater Barrier at Beaumont, Texas; Project Number 98-0394-F2; Description of Proposed Activity: Construction of a permanent saltwater barrier on the Neches River at Beaumont, Texas was authorized in §102 of the Water Resources Development Act (WRDA) of 1976 (Public Law 94-587). The project was described in the Interim Review of Reports on Neches River and Tributaries Covering Saltwater Barrier at Beaumont, Texas and reprinted as House Document 94-629, 94th Congress, 2nd Session.

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-9813566  
Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: August 26, 1998



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 08/31/98 - 09/06/98 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 08/31/98 - 09/06/98 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-9813533

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 25, 1998



## Texas Credit Union Department

### Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Teamsters Local #988 Credit Union (Houston) seeking approval to merge with Houston Teamsters Federal 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-9813473

Harold E. Feeney

Commissioner

Texas Credit Union Department

Filed: August 24, 1998



## Texas Department of Criminal Justice

### Notice of Contract Award

The Texas Department of Criminal Justice forwards this notice of Contract Award for construction of the Snyder Warehouse in Snyder, Texas, for which a Request For Offers was published on May 17, 1998, in the Houston Chronicle, the Ft. Worth Star Telegram, and the Houston Informer. The contract has been awarded to Monterey Construction Company, Incorporated, P.O. Box 630, Wolfforth, Texas 79382. The total dollar value of the contract is \$4,650,000. The period of performance of the contract is August 11, 1998 through April 8, 1999.

TRD-9813516

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: August 25, 1998



## General Land Office

### Notices of Request for Contract Services Proposals

The General Land Office, on behalf of the Coastal Coordination Council, is contemplating the award of three contracts to provide the following services as described.

The Coastal Coordination Council has set forth three missions under the §309 program enhancement portion of the Coastal Zone Management Act:

1. To improve knowledge of the sources of bacteria that indicate potential health hazards from contact recreation and oyster harvesting in the coastal waters of Texas.
2. To develop lists of potential projects for restoring or enhancing wetlands and other coastal resources.
3. To ensure that wetland permitting is done in an efficient manner that minimizes duplication of effort among various state and federal agencies.

A qualified firm or consortium must, as a minimum, have the following attributes to perform the work under contract 1:

1. Expertise in field sampling, storage, transportation, and analysis of fecal coliform or other human health indicator bacteria.
2. Expertise in the use of restriction enzymes and other methods of isolation of DNA from bacterial samples.
3. Expertise in techniques to identify "fingerprint" regions of DNA or other such microbiological distinctions indicative of its source.
4. Ability to access the latest scientific research regarding source identification of fecal coliform or other human health indicator bacteria.
5. Demonstrated field and laboratory Quality Assurance/Quality Control plans for all techniques, procedures, and methodologies.
6. Ability to assess the applicability of similar research in other states to Texas coastal waters.
7. Ability to develop educational materials to communicate the results of these analyses to participating state agencies and the public.

The firm selected must perform a minimum of 70% of the actual contract work to qualify for the contract award.

A qualified firm or consortium must, as a minimum, have the following attributes to perform the work under contract 2:

1. Expertise in Natural Resource Damage Assessment and other natural resource restoration planning.
2. Knowledge of the Texas coast and experience in working with government agencies, conservation groups, nonprofit organizations, academia, the general public, and responsible parties or the regulated community.
3. Ability to identify and map, using a GIS, potential coastal natural resource restoration sites.
4. Ability to evaluate sites for their potential as areas for coastal natural resource restoration
5. Ability to hold regional workshops on the coast to identify coastal natural resource restoration projects.

The firm selected must perform a minimum of 30% of the actual contract work to qualify for the contract award.

A qualified firm or consortium must, as a minimum, have the following attributes to perform the work under contract 3:

1. Expertise with state and federal wetland permitting regulations and governing laws.

2. Expertise with the Clean Water Act §404(b)(1) guidelines.
3. Expertise with compensatory mitigation sequencing and ratios.
4. Ability to facilitate the networking of diverse regulatory agencies and affected groups such as developers, trade associations, and environmental groups.
5. Expertise with Corps of Engineers regulations concerning the development of state programmatic general permits.
6. Ability to assess the applicability of federal practices in other states to activities in Texas.
7. Ability to develop educational materials to improve potential applicants' understanding of the wetlands permitting process.
8. Demonstrated experience in conflict resolution.

The firm selected must perform a minimum of 80% of the actual contract work to qualify for the contract award.

An "indefinite quantity" contract is contemplated, with an initial contract period of 12 months. The providers will be evaluated and selected based on: (1) knowledge, experience, and capabilities in the areas described; (2) ability to perform work within the required time constraints; (3) demonstrated and projected use of HUB vendors. The contract will be awarded in accordance with the procedures set forth in Texas Government Code. §2254.001, et seq.

Providers must be capable of entering into a contract within 10 days of selection and initiating work within 10 days of contract award. Request for Qualifications (RFQ) packets may be obtained by contacting Doug Myers by fax at (512) 475-0680 or by mail at General Land Office, Resource Management Division, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Submittal deadline: Qualifications statements will be accepted until 5:00 p.m. on Monday, October 5, 1998, at the General Land Office, 1700 North Congress Avenue, Room. 617, Austin, Texas 78701-1495.

TRD-9813564  
Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: August 26, 1998



The General Land Office (GLO) is contemplating the award of a contract to provide the following services. The firm selected must perform a minimum of 70% of the actual contract work to qualify for contract award.

A firm or consortium is sought that is capable of providing consulting services in support of the GLO mission to assist local governments in managing the Texas coast.

In particular, the chosen contractor will be responsible for providing advice and recommendation to the GLO and development of the desired local assistance program and assisting the GLO in the organizing, promoting and preparation of:

1. a series of local workshops to be held in coastal communities;
2. a detailed camera-ready beachfront construction and dune protection permitting manual;
3. a detailed camera-ready guidebook for landowners and officials on shoreline stabilization options; and
4. a curriculum and agendas for a series of local workshops.

The qualified firm or consortium must, as a minimum, have the following attributes:

1. Expertise in the preparation of printed educational material concerning state and federal regulations, natural processes, and engineering designed for easy comprehension by a non-technical audience;
2. Expertise in identifying target audiences and coordinating public workshops;
3. Ability to develop materials and curriculum for an ongoing series of workshops to educate coastal-area regulatory officials, builders, homeowners, and real estate agents on regulations concerning coastal erosion, protection of sand dunes, public beach access, public beach user fees, and beach maintenance practices;
4. Ability to conduct follow-up surveys to assess the efficacy of educational materials and workshops.

The award of the contract to provide such services is contingent upon funds becoming available to the GLO. An indefinite quantity contract is contemplated, with an initial contract period of 12 months.

The providers will be evaluated and selected based on:

1. knowledge, experience, and capabilities in the areas described above;
2. ability to perform work within the required time constraints;
3. demonstrated and projected use of HUB vendors.

The contract will be awarded in accordance with the procedures set forth in Texas Government Code §2254.021 et seq.

Providers must be capable of entering into a contract within 10 days of selection and initiating work within 10 days of contract award. Request for Qualification packets may be obtained by contacting Jamie Mitchell at (512) 475-0680 or by mail at General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Submittal deadline. Qualification statements will be accepted until 5:00 p.m., October 5, 1998 at the General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas 78701.

TRD-9813565  
Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: August 26, 1998



## **Office of the Governor, Criminal Justice Division**

### **Extension on Request for Grant Applications Under the Juvenile Justice and Delinquency Prevention Act Challenge Program**

Notice of Invitation for Grant Applications. The Criminal Justice Division of the Governor's Office is soliciting applications for grants to be awarded under the federal Juvenile Justice and Delinquency Prevention (JJDP) Act for implementation of Challenge Activities. Juvenile boards in counties identified as being required by Chapter 37.011 of the Education Code to implement a Juvenile Justice Alternative Education Program (JJAEP) are asked to submit applications. In addition, counties voluntarily implementing a JJAEP are welcome to apply. The Criminal Justice Division will select one to two applicants through competitive scoring for funding in Fiscal Year 1998.

Challenge Activities. Each applicant will be asked to address one Challenge activity. The activity must address the development and adoption of policies and programs to provide basic health, mental health, and appropriate education services including special education, for youths in the juvenile justice system, especially first time offenders, while making it easier for school districts to deal with classroom violence and its perpetrators. The grant-funded project would be required to produce a project model for the jurisdiction served by the applicant and for other juvenile boards that must implement provisions of Chapter 37.011, of the Education Code.

Subject to the provisions of Chapter 37.011, the Criminal Justice Division will consider applications for supervision and services for juveniles referred to a juvenile justice alternative education program. Grant funds must not duplicate local funding, which by statute must be expended for students assigned to a JJAEP. Grant funds may only be used to provide additional services such as self-paced computer-based literacy programs, supervision and services designed to enhance self-discipline, such as creative approach designs to increase math and reading skills, self-discipline, and a safe and disciplined environment that is conducive to learning.

Goals. The goals of the Challenge projects must be addressed with supporting objectives and coincide with at least one of the Challenge activities mentioned. A standard progress report form will be required every quarter throughout the year of funding, which measures the reduction in rates of violence and juvenile delinquency, such as gang-related offenses, weapons violations, assaults, and other violations requiring juvenile referral into the juvenile justice system in each of the counties funded. Outcomes will be compared with baseline data to measure progress toward the priority goal. Each JJAEP will be monitored regularly by the Criminal Justice Division.

Along with a concise description of the activities that will be occurring in each JJAEP, each JJAEP will be asked to submit a timeline that shows the process in which the activities will be implemented.

Eligible Applicants. As stated earlier, juvenile boards in counties required by Chapter 37.011 of the Education Code to implement a Juvenile Justice Alternative Education Program (JJAEP) and counties voluntarily implementing a JJAEP are welcome to submit applications. Groups to be targeted are elementary, middle, and high school-age youths, who as a result of Chapter 37.007 of the Education Code, have been expelled or suspended from a school within the selected county. Eligible target areas are counties with high rates of

juvenile referrals based on the size of the county. Applications must include a map showing the geographic boundaries of the targeted counties and schools and show numbers for violent offenses such as those listed above for the year preceding the project period.

Funding Available. Funds to support programs are made available under Part E of the Juvenile Justice and Delinquency Prevention Act, entitled Challenge Grants. A total of approximately \$260,000 will be granted to one or two projects to implement the Challenge activity identified above.

Contact Persons. The Governor's Criminal Justice Plan for Texas - 1999 and application kits will be made available through the Criminal Justice Division, Office of the Governor. Contact Leticia Peña Martinez (512) 463-1921 or Aimee Snoddy at (512) 475-2252 with Justice Programs, Criminal Justice Division.

Application Due Date. Grant applications must be postmarked by or received at the Governor's Criminal Justice Division on or before **September 7, 1998**.

Selection Process. Eligible applications will be scored according to criteria and points listed on the Application Review Instrument for the JJDP Act - Challenge funds enclosed with the application kit. A rank-ordered list of applications will be made available to the Governor's Juvenile Justice Advisory Board for comments. The Criminal Justice Division shall make recommendations to the Governor, who will make all final funding decisions.

TRD-9813662  
Pete Wassdorf  
General Counsel  
Office of the Governor, Criminal Justice Division  
Filed: August 27, 1998



## **Texas Department of Health**

### **Licensing Action for Radioactive Materials**

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	-----	-----	-----	-----	-----
AMARILLO	PANHANDLE NUCLEAR RX LTD	L04683	AMARILLO	8	08/03/98
ARLINGTON	TEXAS IMAGING MANAGEMENT INC	L05109	ARLINGTON	4	08/05/98
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	77	08/11/98
BEAUMONT	ST ELIZABETH HOSPITAL	L00269	BEAUMONT	71	08/10/98
BROWNSVILLE	BROWNSVILLE MEDICAL CENTER	L01526	BROWNSVILLE	25	08/04/98
BROWNSVILLE	BROWNSVILLE MEDICAL CENTER	L01526	BROWNSVILLE	25	07/21/98
BROWNSVILLE	BROWNSVILLE MEDICAL CENTER	L01526	BROWNSVILLE	26	08/05/98
CONROE	CONROE HOSPITAL CORPORATION	L01769	CONROE	45	08/04/98
CORPUS CHRISTI	SPOHN HOSPITAL	L02495	CORPUS CHRISTI	56	08/14/98
CORPUS CHRISTI	RIVERSIDE HOSPITAL INC	L02977	CORPUS CHRISTI	20	08/07/98
CORPUS CHRISTI	SYNCOR INTERNATIONAL CORPORATION	L04043	CORPUS CHRISTI	21	08/11/98
DALLAS	TEXAS CARDIOLOGY CONSULTANTS	L04997	DALLAS	7	08/11/98
DECATUR	DECATUR COMMUNITY HOSPITAL	L02382	DECATUR	12	08/07/98
DENTON	TEXAS WOMANS UNIVERSITY	L00304	DENTON	49	08/11/98
DENTON	INTERNATIONAL ISOTOPES INC	L04994	DENTON	10	08/12/98
FORT WORTH	RADIOLOGY ASSOCIATES OF TARRANT COUNTY PA	L03953	FORT WORTH	18	08/05/98
FORT WORTH	CONSULTANTS IN RADIOLOGY	L04445	FORT WORTH	4	08/03/98
GARLAND	BAYLOR MEDICAL CENTER AT GARLAND	L02389	GARLAND	9	08/06/98
GRANBURY	GRANBURY HOSPITAL CORPORATION	L02903	GRANBURY	20	08/04/98
HONDO	MEDINA COMMUNITY HOSPITAL	L03323	HONDO	12	08/05/98
HOUSTON	PARKWAY HOSPITAL INC	L01964	HOUSTON	37	08/06/98
HOUSTON	HOUSTON COMMUNITY COLLEGE SYSTEM	L03099	HOUSTON	7	08/13/98
HOUSTON	TEXAS NUCLEAR IMAGING INC	L05009	HOUSTON	7	08/10/98
HOUSTON	HEALTHSOUTH HOSPITAL FOR SPECIALIZED SURGERY	L05164	HOUSTON	3	08/04/98
LA PORTE	AIR PRODUCTS AND CHEMICALS INC	L03475	LA PORTE	6	08/05/98
LUBBOCK	METHODIST HOSPITAL	L00483	LUBBOCK	101	08/10/98
MIDLAND	MEMORIAL HOSPITAL AND MEDICAL CENTER	L00728	MIDLAND	57	08/14/98
ORANGE	BAPTIST HOSPITAL ORANGE	L01597	ORANGE	21	08/12/98
PLANO	ARCO EXPLORATION AND PRODUCTION TECHNOLOGY COMPANY	L00134	PLANO	62	08/07/98
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD	L02266	SAN ANTONIO	64	08/11/98
SAN ANTONIO	NORTHWEST IMAGING CENTER EPIC DIAGNOSTIC CENTERS	L03518	SAN ANTONIO	12	08/04/98
SAN ANTONIO	NORTHWEST IMAGING CENTER EPIC DIAGNOSTIC CENTERS	L03518	SAN ANTONIO	13	08/06/98
SAN ANTONIO	MILLENNIUM MEDICAL IMAGING	L05187	SAN ANTONIO	0	08/03/98
SHERMAN	WILSON N JONES MEMORIAL HOSPITAL	L02384	SHERMAN	20	08/04/98
SHERMAN	WILSON N JONES MEMORIAL HOSPITAL	L02384	SHERMAN	21	08/07/98
TEXAS CITY	AMOCO PETROLEUM PRODUCTS	L00254	TEXAS CITY	46	08/14/98
THROUGHOUT TEXAS	FUGRO SOUTH INC	L00058	HOUSTON	42	08/04/98
THROUGHOUT TEXAS	PROFESSIONAL SERVICE INDUSTRIES INC	L00203	HOUSTON	101	08/10/98
THROUGHOUT TEXAS	WEDGE DIA LOG INC	L00315	GRAND PRAIRIE	82	08/03/98

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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THROUGHOUT TEXAS	SCHLUMBERGER TECHNOLOGY CORPORATION	L00764	SUGAR LAND	76	08/10/98
THROUGHOUT TEXAS	SOUTHWEST RESEARCH INSTITUTE	L00775	SAN ANTONIO	58	08/12/98



THROUGHOUT TEXAS	ASSOCIATED TESTING LABORATORIES INC	L01553	HOUSTON	21	08/05/98
THROUGHOUT TEXAS	ICO WORLDWIDE INC	L01884	HOUSTON	25	08/04/98
THROUGHOUT TEXAS	COMPONENT SALES AND SERVICE INC	L02243	HOUSTON	18	08/04/98
THROUGHOUT TEXAS	MCBRIDE RATCLIFF AND ASSOCIATES INC	L02346	HOUSTON	17	08/10/98
THROUGHOUT TEXAS	RAYTHEON ENGINEERS AND CONSTRUCTORS INC	L02662	HOUSTON	69	08/12/98
THROUGHOUT TEXAS	RADIOGRAPHIC SPECIALIST INC	L02742	HOUSTON	39	08/10/98
THROUGHOUT TEXAS	WILSON INSPECTION XRAY SERVICES INC	L04469	CORPUS CHRISTI	34	08/12/98
THROUGHOUT TEXAS	RHODES TESTING	L04702	LONGVIEW	4	08/05/98
THROUGHOUT TEXAS	TRIPLE M SERVICES INC	L04907	MIDLAND	1	08/13/98
THROUGHOUT TEXAS	PROBE TECHNOLOGY SERVICES	L05112	FORT WORTH	4	08/11/98
THROUGHOUT TEXAS	GAMMA TECH INDUSTRIAL XRAY SERVICE	L05183	LAREDO	0	08/04/98
THROUGHOUT TEXAS	SOUTH TEXAS TESTING LABORATORIES INC	L05190	LAREDO	0	08/07/98
THROUGHOUT TEXAS	M SPEC QUALITY SERVICES INC	L05113	CORPUS CHRISTI	2	08/10/98
WHARTON	GULF COAST MEDICAL CENTER	L01390	WHARTON	20	08/11/98
WICHITA FALLS	HOWMET CORPORATION	L05106	WICHITA FALLS	3	08/04/98

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ABILENE	ABILENE CHRISTIAN UNIVERSITY	L01460	ABILENE	0	08/12/98
N RICHLAND HILLS	NORTH HILLS OUTPATIENT IMAGING CENTER	L03455	N RICHLAND HILLS	0	08/10/98

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
DALLAS	ALBERT H HALFF ASSOCIATES INC	L04074	DALLAS	2	08/04/98
HOUSTON	PARKWAY HOSPITAL INC	L01776	HOUSTON	25	08/06/98

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend-ment #	Date of Action
CHANNELVIEW	ARCTIC PIPE INSPECTION INC	L02858	CHANNELVIEW	0	08/11/98
DALLAS	J D ABRAMS INC	L05026	DALLAS	0	08/11/98
HOUSTON	PLPS INC	L04955	HOUSTON	0	08/11/98
LONGVIEW	HELLER LEWIS AND HOUSE	L04613	LONGVIEW	0	08/11/98
LONGVIEW	LONGVIEW ASPHALT INC	L04827	LONGVIEW	0	08/11/98
VICTORIA	EI DU PONT DE NEMOURS AND COMPANY INC	L01753	VICTORIA	0	08/08/98

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in

such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public

or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in 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 due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9813368  
Susan K. Steeg  
General Counsel

Texas Department of Health  
Filed: August 21, 1998

◆       ◆       ◆

Memorandum of Understanding Between the Texas Department of Health and Texas Department on Aging, Texas Department of Protective and Regulatory Services, Texas Rehabilitation Commission, Texas Commission for the Blind, and Texas Department of Human Services

The Texas Department of Health and the Texas Department on Aging, Texas Department of Protective and Regulatory Services, Texas Rehabilitation Commission, Texas Commission for the Blind, and Texas Department of Human Services finalized a revised memorandum of understanding (MOU) that establishes procedures to eliminate or reduce duplication. As required by Section V of the MOU, this will serve as notice that the following revisions will be implemented 30 days after publication of the MOU in the *Texas Register*. The two revisions are that (1) Texas Department of Mental Health and Mental Retardation is no longer a party to the MOU; and (2) the review schedule for the MOU among the parties changed from semiannually to annual. A copy of the actual MOU is published in this issue under the Tables and Graphics section.

Information pertaining to the development of this MOU is available from the Texas Department of Health by writing Veronda Durden, M.S., Program Director, Home and Community Support Services Agencies, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

TEXAS DEPARTMENT OF HEALTH  
AND  
TEXAS DEPARTMENT ON AGING  
TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES  
TEXAS REHABILITATION COMMISSION  
TEXAS COMMISSION FOR THE BLIND  
TEXAS DEPARTMENT OF HUMAN SERVICES

MEMORANDUM OF UNDERSTANDING

The following state agencies are parties to this memorandum of understanding (MOU):

Texas Department of Health (TDH), Texas Department on Aging (TDoA), Texas Department of Protective and Regulatory Services (TDPRS), Texas Rehabilitation Commission (TRC), Texas Commission for the Blind (TCB), and the Texas Department of Human Services (TDHS).

I.

Pursuant to the Health and Safety Code (HSC), Section 142.009(k) as enacted by Acts 1993, 73rd Legislature, Chapter 800 (HB 1551), the state agencies that are under the Health and Human Services Commission and that contract with, or operate, home and community support services agencies (HCSSA) to deliver home health, hospice, or personal assistance services (PAS) for which a license is required under the HSC, Chapter 142 shall execute an MOU that establishes procedures to eliminate or reduce duplication:

- (1) of standards or conflicts between standards, and
- (2) of functions in license, certification, or compliance surveys and complaint investigations.

This memorandum applies to programs within the state agencies that actually contract with an HCSSA when the contract pertains to the provision of home health, hospice, or PAS for pay or other consideration in a client's residence, an independent living environment, or another appropriate location and to programs within state agencies directly providing home health, hospice or PAS for pay or other consideration in a client's residence, an independent living environment or another appropriate location. This memorandum does not apply to entities which contract with the state agencies when the entities are not required to be licensed as HCSSA under Chapter 142 because they are not providing the covered services or when the entities are exempt from licensure under the HSC, §142.003.

II.

The state agencies party to this MOU agree the following procedures will eliminate or reduce future duplication of standards and of functions in license or compliance surveys and complaint investigations.

- ( 1) Any provider and its subcontractors, not subject to exemptions in HSC, §142.003(a), contracting with a state agency to provide home health, hospice or personal assistance services as these services are defined in HSC, Chapter 142 must be licensed by TDH as an HCSSA to provide services in the category appropriate to the state agencies' clients' needs.
- ( 2) Any state agency directly providing home health, hospice or personal assistance services must be licensed by TDH as a HCSSA unless the state agency is specifically exempted from the licensing requirement as specified in §142.003(a).
- ( 3) All licensed HCSSAs contracting with state agencies and state agencies licensed as HCSSAs are required to comply with all licensing rules adopted pursuant to HSC, Chapter 142.
- ( 4) State agencies shall, in January of each year, provide to TDH a list of contractors providing home health, hospice or personal assistance services and state agency programs directly providing home health, hospice or personal assistance services. State agencies will update the list of contractors quarterly at a minimum.
- ( 5) TDH shall, in January of each year, provide each state agency participating in this MOU with a list of licensed HCSSAs. TDH will update the list of licensed HCSSAs quarterly at a minimum.
- ( 6) TDH shall upon request provide verification to a state agency that an HCSSA is currently licensed and in compliance with the licensing standards.
- ( 7) State agencies may register complaints with the TDH regarding the services rendered by the HCSSA.
- ( 8) Any state agency receiving a complaint will take the complaint and will either investigate the complaint if it falls within the statutory authority of the agency or report the complaint to the appropriate state agency for investigation. Complaints related to licensing standards which also relate to reimbursement, contract and program management issues shall be referred to the TDH and the contracting state agency for review and appropriate investigation.
  - (a) Violations by an HCSSA of licensure standards shall be investigated by the TDH, or the state agency acting on behalf of the TDH, and a status report shall be provided to each of the state agencies with which the HCSSA contracts. If the complaint is valid, complaint files regarding adverse patient care are available at TDH for review by the state agencies.
  - (b) Compliance with reimbursement, contract and program standards will be monitored by the state agency that issued the contract. Complaints regarding contracts, reimbursement and program management of an state agency program shall be investigated by the contracting state agency. A status report will be provided to the TDH if the complaint investigation results in the cancellation, revocation, withdrawal or suspension of a contract with the state agency.

- (c) The investigating agency will assure complainant and/or referring state agency is notified of disposition of complaint in accordance with the investigating agency's rules.
- (9) TDH will complete the initial survey of an HCSSA. Staff of other state agencies may complete other scheduled licensing surveys after the staff has been trained by TDH to complete licensing surveys. TDH will not reimburse another state agency for completing a licensing survey.
- (10) Each state agency will develop and provide to the other state agencies reimbursement, contract and program monitoring tools and training as necessary which may be used by staff of the other state agencies party to this MOU to assist with the evaluation of compliance with reimbursement, contract and program standards. This MOU does not imply or mandate reimbursement for expenses incurred during review of another agency's standards.
- (11) The release of information between state agencies shall be done in a manner which does not violate the confidentiality, privileges, or rights of those persons mentioned in the documents. The release of information between the named state agencies is not a release of a public record under the Texas Open Records Act.
- (12) Each agency shall cooperate in providing agency staff as witnesses at any administrative or legal proceeding of the other agency relating to an investigation, a survey, or monitoring by either agency.
- (13) TDH shall inform the state agencies of any Medicare certification termination action or the initiation of formal licensure action taken against an HCSSA providing services if the HCSSA contracts with a state agency.
- (14) Allegations of abuse, neglect, or exploitation of HCSSA clients will be investigated by the appropriate investigatory agency(ies).
- (15) The TDH and the Board of Nurse Examiners' MOU which defines PAS to include health related tasks or services defined as not constituting the practice of professional nursing, applies to an HCSSA providing services to a state agency program.
- (16) State agency representatives will schedule joint surveys of an HCSSA when possible.

### III.

Specific programs identified as contracting to provide home health, hospice or personal assistance services or providing home health, hospice or personal assistance services to clients in the clients' residence, an independent living environment or another appropriate location are as follows:

- (1) TDoA PAS program which is contracted through providers delivering a service requiring an HCSSA license. The Homemaker program of TDoA provides housekeeping services only and does not require an HCSSA license.

- (2) TDH and the TDPRS have determined that portions of the adult protective and child protective services may include the provision of services by a licensed HCSSA under contract with TDPRS. Licensed HCSSAs under contract with TDPRS render services to clients (adult and child) in residences which may include, but are not limited to adoptive, foster or birth homes. The services rendered in a 24-hour child care facility do not meet the definition of an HCSSA.
- (3) TDH and TCB have identified the Criss Cole Rehabilitation Center, located at 4800 N. Lamar, Austin, Texas, as the only program with TCB contracting with a licensed HCSSA for the provision of services. Other patient care is provided directly by TCB staff at that facility and is exempt from licensing.
- (4) TDH and TRC have identified the PAS program and the Deaf Blindness and Multiple Disabilities (DB/MD) Waiver Program, specific programs which are separate from the Rehabilitation programs of TRC, which include the provision of services by licensed HCSSA under contract with TRC. The provisions for an individual to be hired and paid directly by the TRC client, or the client's family or legal guardian, to provide home health or PAS does not require a HCSSA license. Those providers of the DB/MD Waiver program who are licensed under Personal Care Home Standards do not require an HCSSA license.
- (5) TDH and the TDHS have identified the following as programs contracting with providers delivering services which meet the definition of an HCSSA requiring a license under the HSC, Chapter 142.
  - (a) Primary Home Care (PHC);
  - (b) Community Based Alternatives (CBA);
  - (c) Client-Managed Attendant Care (CMAC);
  - (d) 24-Hour Shared Attendant Care;
  - (e) Community Living Assistance and Support Services (CLASS) direct service agencies;
  - (f) Hospice.

#### IV.

On an ongoing basis, each state agency shall revise as necessary its rules relating to the programs covered by this memorandum to eliminate or reduce duplications or conflicts, so long as the revisions are within the statutory authority of the state agency and reflect an appropriate public policy for the State of Texas.

On an ongoing basis each state agency shall inform the others of proposed revisions to rules which would impact programs or program guidelines covered by this MOU.

On an ongoing basis each state agency shall inform the others of new programs which should be covered by this MOU.

The TDH may find that a HCSSA has satisfied the requirements for licensing if the HCSSA is certified by a state agency that has certification standards that meet or exceed the requirements for licensing under

HSC, Chapter 142. A license fee is required at the time of a license application.

On site visits for licensing surveys and contract compliance monitoring will be coordinated among state agencies. Nothing in this memorandum prohibits on site visits, as needed, for complaint investigations.

Nothing in this memorandum shall limit the authority of the TDH, acting in its capacity under federal law and contract as the Medicare certification agency for the State of Texas, to survey and investigate pursuant to federal law and regulations.

Nothing in this memorandum shall limit the authority of the state agencies from taking actions pursuant to specific statutory authority to ensure the health, welfare, or safety of the public or to regulate the persons, facilities, entities, or programs licensed or certified by or contracting with that agency.

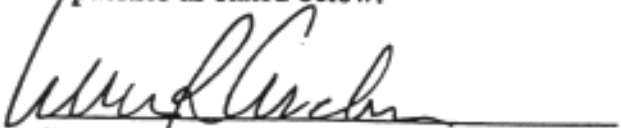
This memorandum does not permit any of the state agencies to act in contradiction of federal or state laws, regulations, or rules.

V.

The state agencies shall revise this memorandum by written amendment except as stated otherwise in this memorandum. The state agencies will review the implementation of this MOU \*annually. TDH shall post proposed changes to the MOU in the Texas Register thirty days prior to the date of implementation.

**EXECUTION OF AGREEMENT**

For the faithful performance of this agreement, it is hereby executed by the undersigned persons in their capacities as stated below.

  
\_\_\_\_\_  
William R. Archer III, M.D., Commissioner  
Texas Department of Health


2/19/98  
Date

*Ed*  
  
\_\_\_\_\_  
Eric Bost, Commissioner  
Texas Department of Human Services

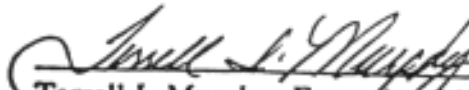
3/17/98  
Date

  
\_\_\_\_\_  
Mary Sapp, Executive Director  
Texas Department on Aging

6-10-98  
Date

  
Jim Hine, Executive Director  
Texas Department of Protective and Regulatory Services

4/20/98  
Date

  
Terrell I. Murphy, Executive Director  
Texas Commission for the Blind

3/30/98  
Date

  
Vernon Arrell, Commissioner  
Texas Rehabilitation Commission

7/17/98  
Date

TRD-9813580  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 26, 1998

federal grant awards to the department; satisfactory completion of the grant application; and the negotiation process.

To Obtain RFP

To obtain a copy of the RFP, contact Jennifer Smith at (512) 458-7670, or send an E-mail request to [jennifer.smith@tdh.state.tx.us](mailto:jennifer.smith@tdh.state.tx.us). No copies of the RFP will be released prior to September 8, 1998. Applications are due no later than 5:00 p.m., central daylight saving time, October 16, 1998, in the office of Chronic Disease Prevention and Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

TRD-9813550  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: August 26, 1998

◆ ◆ ◆  
**Notice of Request for Proposals for Community and Worksite Wellness Programs, Policies and Environmental Change for Physical Activity and Nutrition**

Introduction

The Texas Department of Health's (department) Chronic Disease Community and Worksite Wellness program invites proposals from any employer, public or private, or community agency to address physical activity and nutrition. Approximately \$60,000 will be awarded on a competitive basis to support development of community and worksite wellness programs that include policy and environmental changes to promote physical activity and nutrition as a way to prevent heart disease and cancer. Twenty-four or more contracts will be awarded as a result of this request for proposals (RFP).

Eligible Applicants

Eligible applicants are private and non-profit entities including local health departments, schools, and community agencies within the State of Texas. Individuals are not eligible.

Availability of Funds

Approximately \$60,000 is expected to be available to fund up to \$2,499 per entity for 24 or more projects with a nine month budget. The specific dollar amount to be awarded to each applicant will depend upon the merit and scope of the proposed project. Award of these funds is contingent upon annual general state revenue and

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**Texas Department of Human Services**

**Amendment to Contract**

In Accordance with the Texas Government Code, Chapter 2254, Subchapter B, Texas Department of Human Services (TDHS) publishes this notice of an amendment to two consultant contracts. The notice of awards for the original contracts was published in the August 17, 1993, issue of the *Texas Register* (18 TexReg 5522). The notice of the first amendment to the two consultant contracts was published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5784). Notice of the second amendment to the two consultant contracts was published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6134). Notice of the third amendment to the two contracts was published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7187). Notice of the fourth amendment to the two contracts



was published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7182).

The contracts were awarded to two consultants to provide expertise in information resources for the completion of two separate, but related, consulting projects for the Texas Nursing Facility Medicare Case Mix and Quality Demonstration.

The Texas Department of Human Services awarded one consultant contract to Austin Data Management Associates, 313 West 37th Street, Austin, Texas 78705. The contractor was a partnership when originally contracted, and it has subsequently incorporated as StepWise Systems, Inc. The total dollar amount of the original contract was \$65,000, and was effective from September 1, 1993 through August 31, 1994. TDHS extended this contract through August 31, 1995, and increased the total amount of the contract by \$80,000, for a revised total not to exceed \$145,000. TDHS then extended this contract through August 31, 1996, and increased the total amount of the contract by \$50,000 for a revised total not to exceed \$195,000. TDHS then extended this contract through August 31, 1997, and did not increase the total amount of the contract. TDHS then extended this contract through August 31, 1998, and now intends to make a final extension to this contract through August 31, 1999. No additional funds are being added to the total amount of this contract.

The Texas Department of Human Services awarded a second consultant contract to Red Bluff Computing Consultants, P.O. Box 90892, Austin, Texas 78709. The total dollar amount of the contract was \$40,000, and was effective from September 1, 1993 through August 31, 1994. TDHS extended this contract through August 31, 1995, and increased the total amount of the contract by \$54,000, for a revised total not to exceed \$94,000. TDHS extended this contract through August 31, 1996, and increased the total amount of the contract by \$54,000, for a revised total not to exceed \$148,000. TDHS then extended the contract through August 31, 1997 and increased the total amount of the contract by \$60,000, for a revised total not to exceed \$208,000. TDHS extended this contract through August 31, 1998, and increased the contract by \$46,000, for a revised total not to exceed \$254,000. The Department now intends to make a final extension to this contract through August 31, 1999 and increase the contract by \$66,000, for a revised total not to exceed \$320,000.

Austin Data Management Associates must provide all deliverables under the amended contract no later than August 31, 1999. Red Bluff Computing Consultants must provide all deliverables under the amended contract no later than August 31, 1999.

TRD-9813461

Glenn Scott

Agency Liaison

Texas Department of Human Services

Filed: August 24, 1998



## Texas Department of Insurance

### Amended Notice of Public Hearing

Notice is hereby given that the Commissioner of Insurance or his delegate will hold a public hearing under docket Number 2380. The hearing will be held on Thursday, September 24, 1998 at 9:00 a.m. at the offices of the Texas Department of Transportation located at 200 East Riverside Drive, Building 200 Room 101. The hearing will be to gather information concerning the prohibition of Health Maintenance Organizations and Preferred Provider Organizations from using any financial incentive or making any payment to physician or provider that act directly or indirectly as an inducement to limit medically

necessary services. This is an information gathering hearing which is being held for the purpose of soliciting input on types of actions that may (or may not) constitute improper financial incentives under Insurance Code Article 20A.14 and Article 3.70-3C §7(d) and to implement legislation enacted by the 75th Legislature. All interested parties are invited to attend and participate.

Further information may be obtained from Angie Arizpe at (512) 463-6326.

This hearing is held pursuant to the Insurance Code, Article 1.04C, which requires the Commissioner to provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. This hearing is also held pursuant to Insurance Code 20A.14(l) and Article 3.70-3C §7(d).

TRD-9813455

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: August 24, 1998



### Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of ARIZONA LIFE INSURANCE COMPANY to OLD WEST ANNUITY & LIFE INSURANCE COMPANY, a foreign life company. The home office is located in Phoenix, Arizona.

Application for admission to Texas for the COLORADO CASUALTY INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Englewood, Colorado.

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-9813577

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: August 26, 1998



### Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Utica National Insurance Company of Texas proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code, Article 5.101, §3(g). They are proposing a rate of -73% below the benchmark for only class code 6452 for all coverages and territories for commercial automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary for P&C, Philip Presley, at the Texas

Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9813579

Bernice Ross  
Deputy Chief Clerk  
Department of Insurance  
Filed: August 26, 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 admission to Texas of reSOURCE PARTNER, Inc., (using the assumed name of The One Source Resource Co.), a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9813398

Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: August 21, 1998



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 State Bar of Texas Insurance Trust, a domestic third party administrator. The home office is Austin, Texas.

Application for admission to Texas of TDI Managed Care Services, Inc., (using the assumed name of Eckerd Health Services), a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9813454

Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: August 24, 1998



### Legislative Budget Board

Schedule for Joint Budget Hearings (for the period of September 7-18, 1998) on Appropriations Requests for the 2000-2001 Biennium

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Department of Human Services Tuesday, September 08, 1998	10:00 AM	Winters Bldg., Room 125E 701 West 15th Street	Austin, Texas
Parks and Wildlife Department Tuesday, September 08, 1998	10:00 AM	Capitol Extension, E1.014 14th & Congress Ave.	Austin, Texas
Texas Ethics Commission Tuesday, September 08, 1998	10:00 AM	Capitol Extension, E1.010, 14 & Congress Ave.	Austin, Texas
Texas A&M University System-Baylor College of Dentistry Tuesday, September 08, 1998	10:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas A&M University Health Science Center Tuesday, September 08, 1998	1:00 PM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Low-Level Radioactive Waste Disposal Authority Tuesday, September 08, 1998	2:00 PM	Capitol Extension, E1.026, 14th & Congress Ave.	Austin, Texas
Texas Department of Economic Development Tuesday, September 08, 1998	2:00 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Department of Public Safety Tuesday, September 08, 1998	3:00 PM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Texas Veterinary Medical Diagnostic Laboratory Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,

8/26/98 10:22:39 AM

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*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium*

Texas Natural Resource Conservation Commission Wednesday, September 09, 1998	9:00 AM	@ TNRCC,	Austin, Texas
Texas Forest Service Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Engineering Experiment Station Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Agricultural Experiment Station Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Wildlife Damage Management Service Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Engineering Extension Service Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Agricultural Extension Service Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Transportation Institute Wednesday, September 09, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Commission on Jail Standards Wednesday, September 09, 1998	10:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.s*

Employees Retirement System Wednesday, September 09, 1998	10:00 AM	Capitol Extension, E1.026, 14th & Congress Ave.	Austin, Texas
Texas Real Estate Commission Wednesday, September 09, 1998	10:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Stephen F. Austin State University Thursday, September 10, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas A&M University at Galveston Thursday, September 10, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas A&M University System Thursday, September 10, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas A&M University Thursday, September 10, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Prairie View A&M University Thursday, September 10, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,
Texas Youth Commission Thursday, September 10, 1998	9:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Tarleton State University Thursday, September 10, 1998	9:00 AM	TA&M-John B. Connally Bldg., Room 122 301 Tarrow Street	College Station,

8/26/98 10:22:42 AM

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*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium*

Research & Oversight Council on Worker's Compensation Thursday, September 10, 1998	9:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Mental Health and Mental Retardation Thursday, September 10, 1998	1:00 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Animal Health Commission Thursday, September 10, 1998	2:00 PM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
First District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Sixth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Twelfth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Court of Criminal Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Thirteenth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Ninth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium*

Second District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Office of Court Administration Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Tenth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Eleventh District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Supreme Court of Texas Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Fifth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Fourth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Fourteenth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Eighth District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Third District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Seventh District Court of Appeals Friday, September 11, 1998	8:00 AM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Texas School for the Blind & Visually Impaired Friday, September 11, 1998	10:00 AM	Capitol Extension, E1.026, 14 & Congress Ave.	Austin, Texas
Texas Worker's Compensation Commission Friday, September 11, 1998	10:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
River Compact Commissions Friday, September 11, 1998	10:00 AM	Capitol Extension, E2.028, 14th & Congress Ave.	Austin, Texas
State Office of Risk Management Friday, September 11, 1998	2:00 PM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Texas School for the Deaf Friday, September 11, 1998	2:00 PM	Capitol Extension, E1.026, 14 & Congress Ave.	Austin, Texas
Comptroller of Public Accounts Monday, September 14, 1998	10:00 AM	Capitol Extension, E1.010, 14th & Congress Ave.	Austin, Texas
Texas Education Agency Monday, September 14, 1998	2:00 PM	GSC Board Room, 402	Austin, Texas



*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Coastal Bend College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Collin County Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
South Plains College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Texarkana College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Frank Phillips College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Temple Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Galveston College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Howard County Junior College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
San Jacinto College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas

8/26/98 10:22:47 AM

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*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Tarrant County Junior College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Wharton County Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Alvin Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Southwest Texas Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Ranger College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Vernon Regional Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Panola College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Trinity Valley Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Ciarendon College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Dallas County Community College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Midland College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
McLennan Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Northeast Texas Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Brazosport College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
College of the Mainland Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Laredo Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
North Harris Montgomery Community College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
North Central Texas College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas

8/26/98 10:22:50 AM

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*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium*

Blinn College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Kilgore College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Victoria College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Texas Southmost College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Lee College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Angelina College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Hill College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Austin Community College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Navarro College	Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Grayson County College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Houston Community College System Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Central Texas College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Cisco Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Amarillo College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Paris Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Odessa College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Alamo Community College District Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Del Mar College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas

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*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.*

Weatherford College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Western Texas College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
El Paso Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Tyler Junior College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
South Texas Community College Tuesday, September 15, 1998	10:00 AM	ACC District Administrative Offices, 2nd Floor Board Room 5930 Middle Fiskville Road	Austin, Texas
Texas Workforce Commission Wednesday, September 16, 1998	9:00 AM	John H. Reagan, Room 109, 105 W. 15th Street,	Austin, Texas
The University of Texas of the Permian Basin Wednesday, September 16, 1998	10:00 AM	UT System-Ashbel Smith Hall Bldg., Ash 2 Conference Room 201 West 7th Street	Austin, Texas
The University of Texas at Austin Wednesday, September 16, 1998	10:00 AM	UT System-Ashbel Smith Hall Bldg., Ash 2 Conference Room 201 West 7th Street	Austin, Texas
Texas State Library and Archives Commission Wednesday, September 16, 1998	10:00 AM	Lorenzo de Zavala Bldg., Room 314, 1201 Brazos	Austin, Texas

*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.s*

The University of Texas at El Paso Wednesday, September 16, 1998	10:00 AM	UT System-Ashbel Smith Hall Bldg., Ash 2 Conference Room 201 West 7th Street	Austin, Texas
The University of Texas System Wednesday, September 16, 1998	10:00 AM	UT System-Ashbel Smith Hall Bldg., Ash 2 Conference Room 201 West 7th Street	Austin, Texas
Texas Department of Criminal Justice Wednesday, September 16, 1998	1:30 PM	John H. Reagan, Room 109, 105 W. 15th Street,	Austin, Texas
Department of Information Resources Wednesday, September 16, 1998	2:30 PM	Clements Bldg., Committee Room 5, Fifth Floor 300 West 15th Street	Austin, Texas
Texas Lottery Commission Thursday, September 17, 1998	9:00 AM	GSC Board Room 402, 1711 San Jacinto	Austin, Texas
Office of the Attorney General Thursday, September 17, 1998	9:00 AM	William B. Travis Bldg., Room 1-100, 1701 N. Congress Ave.	Austin, Texas
Texas Department of Housing and Community Affairs Thursday, September 17, 1998	9:30 AM	John H. Reagan, Room 109, 105 W. 15th Street,	Austin, Texas
The University of Texas Health Science Center at San Antonio Thursday, September 17, 1998	10:00 AM	UTSA-John Peace Library Bldg., Regents Room 6900 North Loop 1604 West	San Antonio, Texas
The University of Texas at Brownsville Thursday, September 17, 1998	10:00 AM	UTSA-John Peace Library Bldg., Regents Room 6900 North Loop 1604 West	San Antonio, Texas

8/26/98 10:22:55 AM

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*Schedule for Joint Budget Hearings (for the period of September 7 to September 18, 1998) on Appropriations Requests for the 2000-2001 Biennium.s*

The University of Texas at San Antonio Thursday, September 17, 1998	10:00 AM	UTSA-John Peace Library Bldg., Regents Room 6900 North Loop 1604 West	San Antonio, Texas
Texas Department of Insurance Thursday, September 17, 1998	1:00 PM	John H. Reagan, Room 109, 105 W. 15th Street,	Austin, Texas
Texas Department of Agriculture Thursday, September 17, 1998	2:00 PM	Capitol Extension, E1.014, 14th & Congress Ave.	Austin, Texas
Office of Public Insurance Counsel Thursday, September 17, 1998	3:00 PM	John H. Reagan, Room 109, 105 W. 15th Street,	Austin, Texas



TRD-9813563  
John Keel  
Director  
Legislative Budget Board  
Filed: August 26, 1998

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**Texas Low-Level Radioactive Waste Disposal Au-  
thority**

Notices of Contract Awards

Under the provisions of the Texas Civil Statutes, Health and Safety Code, Chapter 402, Subchapter K, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a contract award for outside legal counsel services for post-administrative hearing procedures before the Texas Natural Resource Conservation Commission (TNRCC).

The request for consultant proposal was published in the June 26, 1998, *Texas Register* (23 TexReg 6764).

The consultant proposal contract was awarded to Bickerstaff, Heath, Smiley, Pollan, Kever, and McDaniel, 1700 Frost Bank Plaza, 816 Congress Avenue, Austin, Texas 78701-2443; (512) 472-8021.

The total value of the contract is \$400,000.00. The contract period begins on September 1, 1998, and will continue until August 31, 1999.

For additional information, contact Lee H. Mathews, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar, Suite 300, Austin, Texas 78752, (512) 451-5292.

TRD-9813212

Lee H. Mathews

Deputy General Manager and General Counsel

Texas Low-Level Radioactive Waste Disposal Authority

Filed: August 19, 1998



Under the provisions of Government Code, Chapter 2254, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a consulting services award for providing advice to the Authority on the management of low-level radioactive waste operations, with specific attention to compliance with the rules and regulations of the Texas Natural Resource Conservation Commission. This consultant will also review health physics plans and programs, specifically related to emergency planning and environmental monitoring developed by the Authority staff in support of the licensing and operations process.

The request for consultant proposal was published in the June 26, 1998, *Texas Register* (23 TexReg 6763).

The consultant proposal contract was awarded to Hugh W. Bryant, 7308 Grass Cove, Austin, Texas 78759; (512) 257-1749.

The total value of the contract is \$5,000.00. The contract period begins on September 1, 1998, and will continue until August 31, 1999.

For additional information, contact Susan Jablonski, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar, Suite 300, Austin, Texas 78752, (512) 451-5292.

TRD-9813213

Lee H. Mathews

Deputy General Manager and General Counsel

Texas Low-Level Radioactive Waste Disposal Authority

Filed: August 19, 1998



Under the provisions of Government Code, Chapter 2254, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a consulting services award for providing archaeological and anthropological support to the facility in terms of preparing and periodically revising a cultural management plan and conducting archaeological surveys to preserve and prevent disturbance of significant historical sites.

The request for consultant proposal was published in the June 26, 1998, *Texas Register* (23 TexReg 6763).

The consultant proposal contract was awarded to Deborah Martin, Ph.D., 107 Ortega Road, NW, Albuquerque, New Mexico 87114; (505) 897-6944.

The total value of the contract is \$5,000.00. The contract period begins on September 1, 1998, and will continue until August 31, 1999.

For additional information, contact Susan Jablonski, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar, Suite 300, Austin, Texas 78752, (512) 451-5292.

TRD-9813214

Lee H. Mathews

Deputy General Manager and General Counsel

Texas Low-Level Radioactive Waste Disposal Authority

Filed: August 19, 1998



## Texas Natural Resource Conservation Commission

Notice of Application for Amendment to Certificate of Adjudication pursuant to Texas Water Code Section 11.122 requiring notice to Interjacent Appropriators

Notice was mailed on August 20, 1998 on Application Number 14-1026A to amend Certificate of Adjudication Number 14-1026, submitted by SANCO MATERIALS COMPANY, 1040 Foster, San Angelo, Texas 76903. Application Number 14-1026A seeks to add a diversion point (Diversion Point Number 2) approximately five miles downstream of Diversion Point Number 1 at a point on the south or right bank of the Colorado River, Colorado River Basin, at the northwest corner of the Emil Allstetter Survey Number 448, Abstract Number 3, Coke County, Texas and correct the description of the location of Diversion Point Number 1 as a point on the south or right bank of the Colorado River which is S50°E, 1470 feet from the northwest corner of the George Kuhlman Survey Number 463, Abstract Number 488, Coke County, Texas. Certificate of Adjudication Number 14-1026 was issued August 19, 1977, to Sanco Materials Company, and authorized, with a time priority of April 27, 1970, the diversion of 320 acre-feet of water per annum with a consumptive use of not to exceed 32 acre-feet of water per annum from the Colorado River for mining (sand and gravel washing) purposes in Coke County, Texas.

The Executive Director may issue an amendment to the Certificate of Adjudication on or after September 18, 1998, unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC on or before September 8, 1998. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Written public comments may also be submitted to the Chief Clerk's Office on or before September 8, 1998. For information concerning technical aspects of the permit, contact Kellye Rila, MC 160, at the same above PO Box address. For information concerning hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same P.O. Box address. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9813513

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 25, 1998



### Notice of Application to Appropriate Public Waters of the State of Texas

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued on August 19 or August 20, 1998.

Elias Dugi, et ux (Florence), Route 1, Box 66, Falls City, Texas 78113; Application Number 5611 for a permit to divert and use not to exceed 175 acre-feet of water per year from Cibolo Creek, tributary of the San Antonio River, San Antonio River Basin at a maximum rate of 700 gallons per minute to irrigate 70 acres of land in Wilson County approximately 15 miles southeast of Floresville, Texas. The applicants are requesting authorization to divert water from a point on the left, or east, bank of Cibolo Creek adjacent to their property.

Properties of the Southwest, L.P., 27870 North I.H. 45, Conroe, Texas 77385; Application Number 5615 for a permit to construct and maintain a dam creating a reservoir for in-place recreational use in a proposed residential development. The proposed reservoir will be on White Oak Creek, tributary of the San Jacinto River, San Jacinto River Basin in Montgomery County, Texas, approximately 11.25 miles southwest of Conroe, Texas. The reservoir will have a surface area of 10 acres and a storage capacity of 50 acre-feet at its normal operating level.

The Woodlands Commercial Properties Company, L.P., P.O. Box 5050, The Woodlands, Texas 77387-5050; An application for an extension of time to commence and complete construction of three dams and reservoirs authorized under Water Use Permit Number 5408, as amended. The authorization established the time to commence and complete construction and modification of the reservoirs to July 26, 1995 and July 26, 1996, respectively. A subsequent extension of time was issued by the Commission that established July 14, 1997 as the new commencement of construction and modification date for the three reservoirs and July 14, 1998 as the new date for completion of construction and modification of the reservoirs. The Woodlands Commercial Properties Company, L.P. currently seeks authorization for an additional extension of time to commence and complete construction and modification of the three reservoirs. The new proposed date for commencement of construction and modification is July 15, 2001 and the new proposed date for completion of construction and modification is July 15, 2002. The applicant has indicated they need this time extension to allow: 1) for the development and implementation of a new business plan; 2) for additional evaluation of the

engineering and financial requirements for the development; and 3) for the delays resulting from the merger and change of ownership.

Donald Pansegrau, RR 1, Box 82-B, Hwy. 240, Westhoff, Texas 77994; Application Number 5614 for a permit to divert and use not to exceed 10 acre-feet of water per annum from an existing on-channel reservoir with a surface area of 1.6 acres at its normal operating capacity of 18 acre-feet. Diverted water will be used at a maximum rate of 1.78 cfs (800 gpm) for the irrigation of 25 acres of land in DeWitt County, Texas. The reservoir, constructed pursuant to Section 11.142 of the Texas Water Code, is on an unnamed tributary of Cooper Creek, tributary of Clear Creek, tributary of Sandies Creek, tributary of the Guadalupe River, Guadalupe River Basin in Dewitt County, Texas, approximately 13.3 miles northwest of Cuero, Texas. The applicant has indicated the reservoir is to be used as a holding tank, and the primary source of the water to be used is from a proposed shallow well with an estimated yield of 150 gpm.

The Executive Director may approve these applications unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC within 30 days after newspaper publication of the notice of application. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the application number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, 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.

TRD-9813514

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 25, 1998



### Notice of Public Hearing

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017, and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 122, concerning General Operating Permits Procedures.

The commission proposes amendments to §122.130, concerning Initial Application Due Dates, §122.134, concerning Complete Appli-

cation, §122.201, concerning Initial Permit Issuance, §122.501, concerning General Operating Permits, §122.503, concerning Application Revisions for Changes at a Site, §122.504, concerning Application Revisions when a General Operating Permit is Revised or Repealed, §122.506, concerning Public Notice for General Operating Permits, §122.508, concerning Notice and Comment Hearings for General Operating Permits, and new §122.509, concerning Public Announcement for General Operating Permits and new §122.510, concerning General Operating Permits Adopted by the Commission. The amendments and new sections would authorize the executive director to issue and revise general operating permits without further rule amendments.

A public hearing on the proposal will be held September 28, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., October 5, 1998, and should reference Rule Log Number 98011-122-AI. For further information, please contact Bruce McFarland of the Operating Permits Division, Office of Air Quality, (512) 239-1132.

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

TRD-9813246  
Margaret Hoffman  
Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: August 20, 1998



#### Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on August 19, 1998 in the Matter of an Enforcement Action Concerning D.E. Martin dba Consumers Water Company and Consumer's Water, Inc.; SOAH Docket Number. 582-97-1523; TNRCC Docket Number. 96-0920-PWS-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-9813512  
Douglas A. Kitts  
Agenda Coordinator  
Texas Natural Resource Conservation Commission  
Filed: August 25, 1998



#### Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, Subchapter S, §361.613, the executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) annually shall calculate and publish the commission's costs to administer the Voluntary Cleanup Program. The Innocent Landowner Program,

based on authority from Solid Waste Disposal Act, §361.752(b), shall also annually calculate and publish the rates established for the purposes of identifying the costs recoverable by the commission. The TNRCC is publishing the hourly billing rate of \$75 for the Voluntary Cleanup Program and \$88 for the Innocent Landowner Program for fiscal year 1999.

The Voluntary Cleanup Law was effective September 1, 1995, and as such, this will be the fourth year of operation for the program. The commission is able to use data from the previous three years to calculate the rate for fiscal year 1999. The Innocent Landowner Program Law was effective September 1, 1997. As such, this will be the second year of operation for the program. Therefore, the commission will be able to use data from the previous year to calculate the rate for fiscal year 1999. The hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding divided by the estimated billable salary hours. The hourly rate for both programs was calculated, and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further 32% reduction to account for nonsite specific hours. The release time includes sick leave, jury duty, holidays, etc. and is set at 16.33% (fiscal year 1998's actual rate). The current fringe benefit rate is 20.84%. Fringe benefits include retirement, social security, and insurance expenses, and are calculated at a rate that applies to the agency as a whole. The current indirect cost rate is 31.22%. Indirect costs include allowable overhead expenses, and are also calculated at a rate that applies to the whole agency. The billings processed for fiscal year 1999 will use the hourly billing rate of \$75 for the Voluntary Cleanup Program, and \$88 for the Innocent Landowner Program, and will not be adjusted. All travel related expenses will be billed as a separate expense. After an applicant's initial \$1,000 application fee has been expended by the Innocent Landowner Program or the Voluntary Cleanup Program in site review and oversight, invoices will be sent to the applicant on a quarterly basis for payment of additional program expenses.

The commission does anticipate receiving federal funding during fiscal year 1999 for the development and implementation of the Innocent Landowner Program and for the continued development and enhancement of the Voluntary Cleanup Program. These federal funds are instrumental in the commission having some of the lowest rates of any state Voluntary Cleanup Program. If the federal funding anticipated for fiscal year 1999 does not become available, the commission may publish a new rate. Federal funding of the Voluntary Cleanup Program and the Innocent Landowner Program should occur prior to October 1, 1999.

For more information concerning this notice, please contact Charles Epperson, Voluntary Cleanup Section, Remediation Division, Texas Natural Resource Conservation Commission, 12118 Park 35 Circle, Building D, Austin, Texas 78753, (512) 239-5891 (P.O. Box 13087, MC 221, 78711).

TRD-9813549  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: August 26, 1998



#### Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rules §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 21, 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's (SWBT) Notification to Grandfather and Withdraw Caller IntelliData Service, Pursuant to Substantive Rule §23.25. Tariff Control Number 19782.

The Application: SWBT filed a notification to inform that it is grandfathering and subsequently withdrawing a discretionary service called Caller IntelliData Service, that provides customers with a reports package containing information regarding incoming telephone calls. Caller IntelliData service is being grandfathered for six months then withdrawn due to low customer demand and because the service has not been meeting customer expectations, as shown by customers who tried and then canceled the service. SWBT requests the grandfathering of Caller IntelliData to be effective October 1, 1998 and the withdrawal effective date to be April 1, 1999.

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 September 10, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9813528  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 25, 1998

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 20, 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's (SWBT) Notification to Institute Rates that Provides Free 10% Discount Optional Calling Plan for Business Customers Newly Subscribing to BizSaver and THE WORKS Pursuant to Substantive Rule §23.25. Tariff Control Number 19779.

The Application: SWBT filed an application to institute rates that provides free 10% Discount Optional Calling Plan (OCP) to all business customers newly subscribing to the BizSaver and THE WORKS vertical services packages. Existing business customers subscribing to BizSaver and THE WORKS will receive the 10% Discount OCP free of charge. This service offering is a replacement for the present promotion of this 10% Discount OCP on BizSaver and THE WORKS.

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 September 10, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9813529  
Rhonda Dempsey  
Rules Coordinator

Public Utility Commission of Texas  
Filed: August 25, 1998

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#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 20, 1998, Choctaw Communications, LLC filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60052. The Applicant is being acquired by VarTec Telecom, Inc.

The Application: Application of Choctaw Communications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19777.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 9, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19777.

TRD-9813477  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 24, 1998

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#### Notices of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Wes-Tex Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19747.

The Application: Wes-Tex Telephone Cooperative, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19747.

TRD-9813372  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas

Filed: August 21, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Santa Rosa Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19748.

The Application: Santa Rosa Telephone Cooperative, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19748.

TRD-9813373

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Southwest Arkansas Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19749.

The Application: Southwest Arkansas Telephone Cooperative, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19749.

TRD-9813374

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Riviera Telephone Company, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19750.

The Application: Riviera Telephone Company, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19750.

TRD-9813375

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19751.

The Application: Mid-Plains Rural Telephone Cooperative, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19751.

TRD-9813376

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14,

1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Livingston Telephone Company for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19752.

The Application: Livingston Telephone Company's intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19752.

TRD-9813377  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Cumby Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19753.

The Application: Cumby Telephone Cooperative, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19753.

TRD-9813378  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 14, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Alenco Communications, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19754.

The Application: Alenco Communications, Inc.'s intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19754.

TRD-9813379  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 1998

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Notices of Application for Approval of IntraLATA Equal Access Implementation Plan and Petition for Waiver of P.U.C. Substantive Rule §23.103(d)(2)(C)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 6, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan and petition for waiver.

Project Number: Application of Allegiance Telecom of Texas, Inc. for Approval of IntraLATA Equal Access Implementation Plan and Petition for Waiver of P.U.C. Substantive Rule §23.103(d)(2)(C). Project Number 19707.

The Application: Allegiance Telecom of Texas, Inc.'s (Allegiance) intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of February 8, 1999.

Allegiance requests a waiver of the requirement that it file an intraLATA equal access plan no later than 180 days prior to offering in-region interLATA toll service. Allegiance requests that the commission find that good cause exists to waive §23.103(d)(2)(C) so that Allegiance may continue reselling long distance service in Texas as its intraLATA equal access plan is in the process of being approved and implemented.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19707.

TRD-9813526  
Rhonda Dempsey  
Rules Coordinator

Public Utility Commission of Texas  
Filed: August 25, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 7, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan and petition for waiver.

Project Number: Application of KMC Telecom Inc. for Approval of IntraLATA Equal Access Implementation Plan and Petition for Waiver of P.U.C. Substantive Rule §23.103(d)(2)(C). Project Number 19712.

The Application: KMC Telecom Inc.'s (KMC) intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of February 8, 1999.

KMC requests a waiver of the requirement that it file an intraLATA equal access plan no later than 180 days prior to offering in-region interLATA toll service. KMC requests that the commission find that good cause exists to waive §23.103(d)(2)(C) so that KMC may continue reselling long distance service in Texas as its intraLATA equal access plan is in the process of being approved and implemented.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before September 14, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19712.

TRD-9813525  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 25, 1998



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 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 Ernest Communications, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19776 before the Public Utility Commission of Texas.

Applicant intends to provide basic local exchange service to residential and business customers through the resale of services.

Applicant's requested SPCOA geographic area includes all geographic areas served by all incumbent local exchange carriers within the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 9, 1998.

Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9813380  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 1998



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

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to P.U.C. Substantive Rule §23.27 for a new customer-specific contract to provide SONET OC-12 Ring Connection to Westar Protection One (Westar).

Tariff Title and Number: GTE Southwest, Inc. (GTESW) Notice of Intent to File a Customer-Specific Contract to Provide SONET OC-12 Ring Connection to Westar Protection One (Westar) Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19789.

The Application: GTESW is requesting approval to provide SONET OC-12 Ring Connection to Westar located in Irving, Texas. GTESW intends to file this application around September 4, 1998. The SONET OC-12 Ring connection service which GTESW proposes to offer Westar is a high-speed private line service, which provides connectivity between a customer-dedicated location and at least one telephone company serving wire center. GTESW proposes to offer this service in the Irving, Texas exchange.

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-9813527  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 25, 1998



#### Public Notices of Interconnection Agreement

On August 17, 1998, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and Local Telecom Services, 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 19762. 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 19762. 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 September 18, 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 19762.

TRD-9813382  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 1998



On August 20, 1998, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and Trans National Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under

the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19778. 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 19778. 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 September 18, 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 19778.

TRD-9813383

Rhonda Dempsey  
Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 1998



On August 13, 1998, Southwestern Bell Telephone Company and Reitz Rentals, Inc. doing business as Texas Teleconnect, 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 19743. 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 19743. 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 September 18, 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 19743.

TRD-9813381

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 1998



## Railroad Commission of Texas

### Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for the regrading of approximately 160 acres at the Butler Weddington (Area 4) AML Regrade Project Abandoned Mine Land (AML) site. The site is located in Karnes County, 11 miles southwest of Falls City, Texas off FM 791.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A. Section 1201 et seq), the Commission will award a unit price, fixed price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2 p.m., October 6, 1998, at which time the bids will be publicly opened and read at the following address. A mandatory pre-bid conference will be held at the site at 10 a.m., September 17, 1998. Construction work item will include:

- (1) Mobilization
- (2) Clearing and Grubbing
- (3) Topsoil and Clean Cover Handling
- (4) Earthwork
- (5) Water Control Structures
- (6) Special Handling of Unsuitable Spoil Materials

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the mailing address: Butler-Weddington Area 4 AML Regrade Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; P.O. Box 12967; Austin, Texas 78711-2967; Attention: Mark J. Rhodes, Assistant Director. All questions concerning the work or bid document must be received by 5 p.m., September 25, 1998. For additional information call Mark Rhodes at (512) 305-8834.

TRD-9813561

Mary Ross McDonald  
Deputy General Counsel  
Railroad Commission of Texas  
Filed: August 26, 1998

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## Southwest Texas State University

### Request for Proposal

#### Conditions and Information for Proposers on Comprehensive Plan for Student Housing

##### I. General

This Request for Proposal is part of a competitive procurement process which helps to serve the University's interests. It also provides a fair opportunity for all interested firms to be considered. The process of competitive negotiation being used in this case should not be confused with competitive bidding. The latter process is usually used where the goods or services being procured can be precisely described and price is generally the determinative factor. With competitive negotiation, however, price is not required to be the determining factor, although it may be. The University has the flexibility it needs to determine the "best value," including negotiation with any or all firms to arrive at a mutually agreeable relationship.

There are approximately 5,000 undergraduate and graduate students, staff and faculty living in university housing. SWT's housing requirement is that all students who are younger than 21, and have accumulated less than 56 hours and live within 60 miles of campus, must reside in its residence halls.

SWT's housing units include 20 residence halls and three apartment complexes, with ages ranging from 11 to 52 years. Average building age is 33.2 years. Median building age is 36.

Two buildings, Smith Hall (1993) and Butler Hall (1992) have been recently renovated. Renovations to these buildings included mechanical, electrical, and plumbing systems, as well as aesthetic improvements.

Approximately \$1.5 million was spent in each of the last three years in renovation of residence halls and apartments. Additionally, approximately \$1.2 million per year is spent in regular maintenance.

Both the Residence Life Office and Physical Plant maintain comprehensive facilities plans for the residence halls and apartments; however, we are aware of the need to have these plans audited and improved. Additionally, the Residence Life Office maintains a comprehensive strategic plan focusing through fiscal year 2003 which is also continually reevaluated and updated.

##### II. Dates, Correspondence, Prebid Conference, Etc.

A. All correspondence and questions regarding this request for proposal will be directed to:

Mr. Brian Montgomery, Assistant Director

Residence Life

Southwest Texas State University

601 University Drive - J. C. Kellam 385

San Marcos, TX 78666-4616

(512) 245-2929

Proposals, together with all supporting documents and information requested in this RFP as specified in Section IV, must be received at the Residence Life Office, J. C. Kellam room 385, until 3:00 p.m., September 28, 1998, at which time the Form of Proposal will be publicly opened and read. Proposal packets will be sealed and clearly marked on the outside of the packet as follows:

Proposal for Comprehensive Plan for Student Housing Do Not Open Until 3:00 p.m., September 28, 1998

B. Within this RFP, the terms "bid," "proposers," and "prebid" may be used interchangeably to refer to this proposal, proposers, and pre-proposal meeting. The use of these terms in this manner shall not be construed to mean that this is a bid document, or that the procurement process involves competitive bidding.

C. A mandatory pre-proposal conference is scheduled for 2:00 p.m. September 11, 1998, in the Regents Room, 11th floor, of the J. C. Kellam Building on the campus of Southwest Texas State University. Attendance at this conference is mandatory. SWT intends to present general information which may be helpful in the preparation of proposals and to allow SWT the opportunity to respond to questions concerning this Request for Proposal.

All questions pertaining to this RFP should be submitted in writing, and must be received by SWT no less than two days prior to the date of the pre-proposal conference. Responses to "ad hoc" questions raised during the pre-proposal conference may require additional consultation and/or clarification. Responses will be compiled and provided to all attendees prior to RFP submittal date.

Parking is limited. Check in with the guard at the entrance of the parking lot off Moon Street and niversity Drive for a visitor's pass and parking instructions.

D. Proposers are expected to visit SWT for an on-site inspection of the present facilities. Failure to do so will in no way relieve the successful proposer of fulfilling any conditions or obligations of the contract. Site visits will be scheduled from 10:00 a.m. to 2:00 p.m., September 9 and 10, 1998. These will be escorted visit. Proposers must contact the Residence Life Office at 245-2929 to schedule a site visit or visits on one or both of these dates. Proposers may visit the campus at a later time in addition to this, however this will not count as a site visit as required in this document.

Proposals must be at the specified location at the specified time set for the opening in order to be considered. The mere receipt by the University at the mail room, Central Receiving Warehouse or other location on campus will not be considered sufficient. Proposers are advised to hand carry or use courier services if Proposals cannot be mailed well in advance of the proposal opening date.

Submittals cannot be altered or amended after opening time, except as a result of negotiation. Any alteration made before opening time must be initiated by contractor or his/her authorized agent. No submittal can be withdrawn after opening time without the approval of SWT, based on a written acceptable reason.

##### III. Basis of Selection/Negotiation

It is the intent of SWT to award a contract for a comprehensive housing plan at SWT as listed in this RFP. After proposal analysis, tabulation, and such investigation of proposers as SWT deems appropriate, an award will be made to the proposer whose proposal is judged to represent the BEST VALUE TO SWT.

An oral presentation by one or more proposers may be required after proposals are received by SWT. If the SWT requires such a presentation, SWT will schedule a time and place. Each proposer should be prepared to discuss and substantiate any of the areas of the proposal it submitted, its own qualifications for the services required, and any other area of interest relative to its proposal including, but not limited to:

Clarifying proposals Resolving inconsistencies. Clarifying necessary details and responsibilities. Emphasizing important issues and points.

Receiving assurances from respondents. Exploring ways to improve the final contract.

Agreements and information provided may be included as part of the negotiated contract. Parties should understand that information exchanged in the negotiation process is confidential to the fullest extent permitted by law, and neither party will disclose such information to anyone other than representatives of the negotiating parties except as required by Texas law.

Selection of the recommended Consultant is at the university's sole discretion and may be made without further discussions or negotiation; therefore, proposals should be submitted on the most favorable terms which can be submitted in response to the RFP. Proposals must demonstrate an understanding of the scope of service to be provided and the ability to accomplish the tasks set forth, and must include information that will enable SWT to determine contractor's overall qualifications. SWT reserves the right to request to negotiate with any proposer to arrive at a final decision.

The RFP evaluation criteria of this proposal will be based upon, but not limited to:

Relevant experience and past performance as the consultants for similar operations

Ability to meet terms and conditions as specified and the ability to assist the Residence Life Office of SWT in meeting its strategic initiatives

References furnished from projects of a similar scope and nature

Methodology/Approach

Staff Qualifications

HUB/Women/Minority involvement

Time line for completion of the contract

Prior to award, final evaluation criteria that will be used to determine best value shall be made available upon request to interested parties. Relevant experience and past performance as consultants for similar projects will be the most important of these criteria.

SWT reserves the right to reject any submittal if the evidence submitted by or an investigation of such proposer fails to satisfactorily convince SWT that such proposer is properly qualified by experience and/or facilities to carry out the obligations of the contract and to satisfactorily complete the work contemplated herein.

Conditional offers will not be accepted.

SWT reserves the right to reject any and all submittals or any part of any submittal, waive technicalities or formalities in the proposal process or cancel request for proposal openings if it is deemed to be in the best interest of SWT with no recourse by any proposer. Submittals will be returned unopened if an opening is canceled.

#### IV. Content of Proposal (Original + Seven Copies)

It is the purpose of this proposal to obtain as complete data as possible from each respondent to enable SWT to determine which respondent is best able to address all of the criteria which are to be considered in the award of this contract. To this end, each proposer will furnish, as a part of this proposal, a complete general description of experience in the field of consulting for housing operations and proposed services to SWT.

#### V. Project Scope - Exhibit 1

##### A. Market Analysis -

The goal of this phase is to understand the opportunities and constraints posed by factors both external and internal to the housing system at SWT. This will be accomplished by the following processes:

**Off-Campus Market Analysis** - The goal of this process is to provide information about the off-campus housing market. The consultant should collect and analyze data on where students live off-campus, what type of units they rent at what rent levels, and with what included amenities. The analysis should also include a review of general market conditions and trends, such as occupancy rates and rent levels as well as identification of any proposed projects that could provide additional competition to on-campus housing.

**Peer Institution Analysis** - The goal of this process is to learn what peer institutions offer in terms of housing types and prices in order to understand the housing options prospective students evaluate and how the costs and offerings of such housing affect the University's competitive position.

**Focus Group Development and Processing** - The goal of this process is to consult with constituent groups identified in the Residence Life strategic plan. The focus groups should be used to provide qualitative information on pertinent lifestyle issues, desired unit types, sizes and amenities as well as the willingness to pay for stated amenities.

**Enrollment Projections** - The goal of this process is for the consultant to review the University's 10-year enrollment projections and analyze how these projections might impact the Comprehensive Housing Plan.

**Housing Requirement Analysis** - The goal of this process is for the consultant to review the University's housing requirement and analyze the impact and viability of a "freshman only" housing requirement.

**Low cost/Alternative Housing** - The goal of this process is for the consultant to make a recommendation as to the viability of providing low cost apartment housing. As part of this analysis, consultant will evaluate the need for the replacement of Comanche Hill and Riverside apartments, with new complexes, or the demolition of these locations. Partnering with a private developer is an option that should be addressed.

**Customer Survey** - The goal of this process is to provide quantitative information on the level and type of demand and potential rent levels. The consultant is to conduct a written survey of a statistically relevant sample of students. The survey will collect demographic information on current housing situation, attitudinal factors affecting housing selection, and information on desired unit types and financial data to determine pricing structure.

##### B. Facility Analysis

The goal of this phase is to understand the opportunities and constraints posed by the existing housing and to provide information required to evaluate various renovation versus new construction options.

The Consultant will perform a facilities audit on existing residential stock to provide an overview of the condition of each building. The audit will be a non-destructive inspection of residence life facilities. A separate report will be provided for each residence hall and apartment which will catalog the various projects that are identified as well as estimated costs for each project.

The Consultant will compare this information to existing data maintained by Residence Life and Physical Plant and incorporate this information into a plan which, taking into account the factors provided in the financial analysis/pro forma, will provide a working document for future decision making.

Included in each report will be projects separated into the following cost centers:

Deferred Maintenance - Refers to expenditures for repairs that have not been accomplished as a part of normal maintenance or capital repair which has accumulated to the point that facility deterioration is evident and has, or could within six years, impair the proper functioning of the facility. Cost estimated for deferred maintenance projects should include compliance with applicable codes even if such compliance requires expenditures additional to those essential to effect needed repairs.

Capital Renewal - A subset of regular or normal facility maintenance that refers to major repairs or the replacement/rebuilding of major facility components.

Plant Adaptation - Refers to those expenditures required to adapt the facility to the evolving needs of the institution and to changing standards. These are expenditures in addition to normal maintenance. Examples include compliance with changing codes, including ADA, fire and life safety, and facility alterations required by changed teaching or research methods, and improvements occasioned by the adoption of modern technology, e.g., the introduction of VAX technology in classrooms and residence halls.

New Construction - SWT does not anticipate the construction of any new residence halls within the immediate future; however, this section refers to the potential costs associated with the development of new apartment projects as identified in the market analysis.

#### C. Program and Budget Development

The goal of this phase is to develop a preliminary program and budget based on the results of the market and facilities analysis. Consultant will develop a conceptual program (including preliminary concept diagrams and cost estimates) for any renovation, reconfiguration, and/or new construction, including optimum number of units, types of units and size of units for the housing system.

#### D. Financial Pro Forma

The goal of this phase is to balance market demand against financial considerations to determine what scenarios might result in self-supporting modifications to the housing program. The consultant is to develop capital budget and operating pro formas for individual projects as well as the housing system. The consultant will run various scenarios through the pro formas, varying inputs such as program, construction costs, debt, financing assumptions, operating costs, etc.

#### E. Implementation Strategies

The goal of this phase is to investigate alternative means of financing and developing student housing. The consultant will provide a summary of the relative advantages and disadvantages of alternative project delivery options, evaluate the applicability of such options to SWT, and make a recommendation on which delivery option SWT should pursue.

#### F. Comprehensive Housing Plan

The goal of this phase is to combine all elements of the scope of work and create a road map for the implementation of the recommended projects. The final plan will be presented to the University President and his Cabinet. Consultant will provide SWT with both a written document as well as provide the plan on computer disk(s) in a media acceptable to SWT.

#### VI. Form of Proposal

Each response must be prepared following the format below or the University will deem the submittal to be non-responsive. Respond on a point by point basis as identified below.

#### A. Company Background and Information - Exhibit II

1. Name and address of operating company
2. The duration and extent of experience in consulting for housing operations. Explain in detail
3. A table of company organization and a plan for the administrative management, supervision and staffing proposed for the services to be provided under the terms of the attached contract
4. A list of at least four current, and one former, similar operations and locations where you are or have been a consultant. Provide length of time and name of contact person of each operation.
5. A complete certified balance or annual report prepared by a certified public accountant as of your last fiscal year of operation
6. If incorporated, the names of all directors and officers of the corporation; if a partnership, the names of all partners; and if another form of business entity, the names of all owners of the entity.
7. In accordance with Chapter 2161 of the Texas Government Code and Texas State University System, which requires good faith efforts to assist Historically Underutilized Business (HUB's), a description of company's HUB utilization history and proposed HUB plan.

#### B. Work Plan - Exhibit III

1. A brief summary of firm's approach/philosophy.
2. A detailed description of the proposed methodology, including tasks and deliverables for each phase. Discuss in the order shown in Exhibit V.
3. A time line for completion of the study, with the completion no later than days after the start of the project.
4. A proposed schedule of meetings between Consultant and SWT.

#### C. Fee Proposal - Exhibit IV

1. A listing of total fees and estimated reimbursable expenses by phase as outlined in the work plan and in the Form of Proposal.
2. A separate listing of additional services the consultant would like to suggest and associated fees.

As it is understood that the need for regular meetings and telephone calls during this process is necessary for the successful completion of any service of this type, these shall be considered expenses in the normal course of business, and as such will not be paid for by SWT as additional expenses.

#### E. Other Information - Exhibit V

1. Other such information as the proposer deems pertinent for consideration.

#### VII. Contract and Other Conditions

A. The proposal constitutes an offer by the contractor which shall remain open and irrevocable for a minimum period of 120 days from the proposal opening date. The contract will be presented for Board approval on November 13, 1998, at their meeting to be held at Beaumont, Texas.

B. No recommendation will be made until SWT is fully satisfied that the contractor is professionally competent and properly equipped to render a consulting service of the desired quality. The University

appreciates your company's consideration of the Request for Proposal and looks forward to receiving your proposal.

C. Historical data is furnished to help in the preparation of proposals and should not be construed as a guarantee of any kind.

TRD-9813492

William A. Nance

Vice President for Finance and Support Services

Southwest Texas State University

Filed: August 25, 1998



## Teacher Retirement System of Texas

### Consultant Contract Award

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.030

The Teacher Retirement System of Texas (TRS) has contracted with Watson Wyatt Worldwide to conduct a compensation study of investment and executive positions. Watson Wyatt's address is 2121 San Jacinto Street, Suite 2400, Dallas, Texas 75201-2772.

The agreed compensation set forth in the contract is \$37,380 plus out of pocket expenses with an option to do a third party survey for an amount not to exceed \$21,000. The contract is effective August 14, 1998, and shall end on or about October 1, 1998.

A final report is due upon completion and will provide a market competitiveness analysis for TRS positions and revised job descriptions for the positions.

TRD-9813401

Charles Dunlap

Executive Director

Teacher Retirement System of Texas

Filed: August 21, 1998



## Texas Department of Transportation

### Public Notice

Public Notice: In the July 10, 1998, issue of the *Texas Register* (23 TexReg 7196), the Texas Department of Transportation proposed the repeal of Title 43, Texas Administrative Code, §2.24, and proposed new §2.24 concerning a Memorandum of Understanding with the Texas Historical Commission. The preamble describing the proposal inadvertently failed to discuss the consistency of the proposed rules with applicable goals and policies of the Texas Coastal Management Program (CMP).

Transportation Code §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment, for the preservation of the natural environment, or for the preservation of historic or archeological resources. New §2.24 is proposed to describe procedures providing for Texas Historical Commission (THC) review of department projects which have the potential to affect cultural resources within the jurisdiction of the THC and to ensure that historic and archeological resources are given full consideration in accomplishing the department's activities.

This rulemaking action has been determined to be subject to the CMP in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.) and the rules of the Coastal Coordination Council (31 TAC Chapters 501-

506). As required by 31 TAC §505.22(a), this rulemaking action must be consistent with all applicable CMP policies.

This action has been reviewed for consistency, and it has been determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that transportation projects be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects to coastal natural resource areas from construction and maintenance. This rulemaking action provides a means for identifying the environmental impacts of department transportation projects on archeological resources and historic properties, for coordination of these projects with the relevant state resource agency, and for inclusion of these investigations and coordinations in the environmental documentation for each project. All of these purposes will provide a mechanism for minimizing adverse effects of department projects on coastal historic areas. For these same reasons, the rulemaking action is consistent with the CMP goal of protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas.

Interested persons are requested to submit comments on the consistency of the proposed rules with the CMP. Written comments may be submitted to Dianna F. Noble, P.E., Director of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 5, 1998. This comment period is consistent with the public comment period required for rulemaking actions by the Administrative Procedure Act, Government Code, Chapter 2001.

TRD-9813536

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Filed: August 25, 1998



## Texas Turnpike Authority

### Public Notice (RFQ Financial Advisor)

The following request for qualifications for providing professional financial advisory services is filed under the provisions of the Texas Government Code, Chapter 2254:

The Texas Turnpike Authority (the "TTA"), a Division of the Texas Department of Transportation, an agency of the State of Texas, is soliciting statements of interest and qualifications from professional financial advisory firms to provide financial advisory services. Firms responding must demonstrate a history of providing expert advice to governmental agencies including but not limited to investment of available assets in legally permissible interest yielding accounts and paper, issuance and servicing of tax exempt debt, analysis of the financial feasibility of potential turnpike projects, and continuing financial review and analyses of previously issued tax-exempt turnpike financings. Such financial advisory services can occur over the next ten years, subject to appropriations by the Texas Legislature.

Proposed fees or budgets shall not be submitted with any initial response or other communication of a firm. A financial advisor qualification packet will be available September 1, 1998 and will be issued to each firm filing a written notice that it desires to respond. Final firm responses must be received in the offices of the Texas Turnpike Authority before 4:45 p.m. CDST, September 23, 1998 to be eligible for consideration.

When a firm responds by filing its qualification, it shall include a summary of the affirmative action program of the firm. It is the policy of the TTA to encourage the participation of Historically Underutilized Businesses, ("HUBs"), minorities, and women in all facets of the agency's activities. To this end, the extent to which HUBs, minorities, and women participate in the ownership, management and professional work force of a firm will be considered by the TTA in the selection of a firm to serve as financial advisor. Respondents shall submit a current profile of their firm with its response to this RFQ.

Each firm will be evaluated on its experience in providing financial advisory services of the type routinely required by the TTA, the expertise of personnel who will be assigned to TTA, the respondents office locations(s), size of the respondents firm, and the reputation of the respondent in the financial/underwriting/investment banking industry.

Qualifications filed will be reviewed by board/staff selection committee(s) to identify those most qualified and experienced respondents who may best serve the TTA on specific assignments. The final financial advisor selection, if any, will be made following completion of the review of responses and negotiation of a satisfactory fee.

Questions concerning this assignment shall be directed to James W. Griffin, Interim Division Director, Texas Turnpike Authority, (512) 936-0903.

TRD-9813574  
James W. Griffin  
Interim Director  
Texas Turnpike Authority  
Filed: August 26, 1998

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**Texas Youth Commission**

**Request for Proposal**

To provide Secure Residential Services for Female Offenders.

The Texas Youth Commission (TYC) is issuing a request for written proposals to provide secure residential services in the state of Texas for 48 female offenders.

Description: The focus of the TYC RFP #98-26 is to provide a program of treatment within TYC's Resocialization framework with

a range of services that are specifically directed to female needs. The program must be capable of managing a range of problem behaviors that sometimes includes aggression toward self or others. The following is a profile of the youth that may be served by this request for proposal: four percent high capital offender treatment need; seven percent sex offender treatment need; sixty-five percent chemical dependency treatment need; sixty-five percent emotionally disturbed with a mental health treatment need. Seventy-three percent of the females are between the ages of 15 and 18. Nineteen percent are committed for violent offenses, up to and including murder. Thirty percent have assaulted staff at least once; thirty percent have committed assaults on other students; eighty-three percent have been committed to security at least one time; and twenty-five percent have been committed to security 10 or more times. Twenty-seven percent are Anglo, thirty-four percent African American, thirty-eight percent Hispanic, and one percent other. The youths' average reading level at commitment is 5th grade, 1st month and average math level is 5th grade, 1st month.

Eligible applicants include corporations, private non-profit agencies, private for profit agencies, and individuals. The Texas Youth Commission encourages historically underutilized businesses to respond to this request for proposal. Proposals must be received no later than 5:00 p.m., October 19, 1998.

Evaluation and Selection: Proposals will be evaluated and selection based on the cost components, program implementation, applicant background, and program description. A point and ranking system will be used to evaluate proposals.

Contact Person: Request for Proposal packets and information may be obtained from Paula Morelock, Director of Contract and Support Programs, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, FAX 512/424/6300 or 512/424/6238. Closing Date: The closing date for receipt of proposals is October 19, 1998, at 5:00 p.m.

TRD-9813511  
Steve Robinson  
Executive Director  
Texas Youth Commission  
Filed: August 25, 1998

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