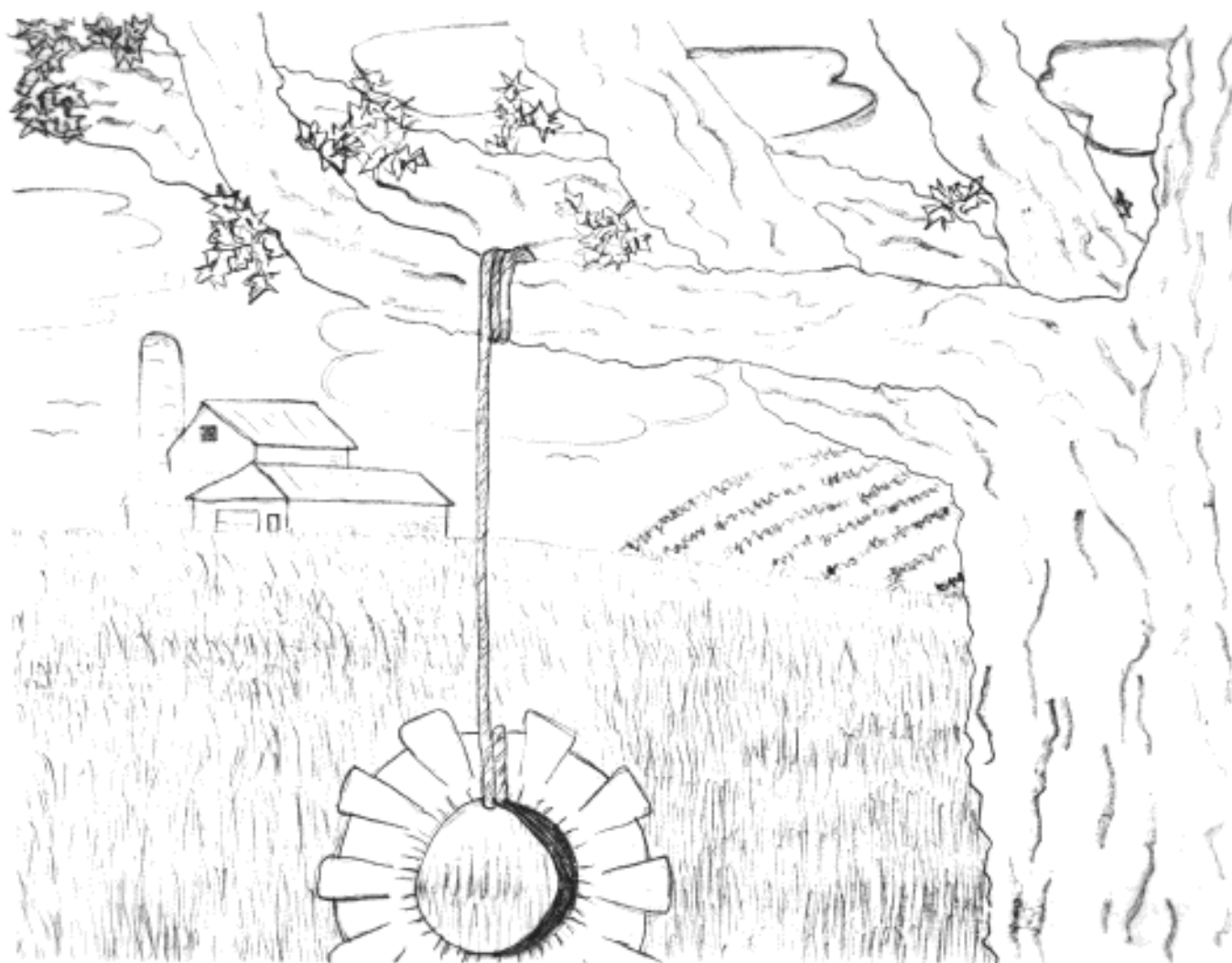


TEXAS REGISTER

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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.

Letter Opinions

LO# 98-074 (RQ-1148). Request from The Honorable Kim Brimer, Chair, Committee on Business and Industry, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910, concerning whether section 321.406, Tax Code, limits the frequency of elections held under chapter 334 of the Local Government Code.

Summary. Section 321.406, Tax Code, which limits the frequency of sales tax elections held by a municipality, is applicable to elections held under chapter 334, Local Government Code. Thus, the city of Arlington may not hold a sales tax election under chapter 334 earlier than one year from the date of any previous sales tax election.

LO# 98-075 (RQ-1088). Request from Mr. Sid L. Harle, Chair, Court Reporters Certification Board, P.O. Box 13131, Austin, Texas, 78711-3131, concerning requirements of a verified complaint filed with the Court Reporters Certification Board.

Summary. The Court Reporters Certification Board must decide upon all of the elements on the complaint form including the form of the oath.

TRD-9814669
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: September 16, 1998



Opinion

DM-483 (RQ-968, RQ-1100). Requests from The Honorable Richard J. Miller, Bell County Attorney, P.O. Box 1127, Belton, Texas, 76513 and The Honorable Bill Moore, Johnson County Attorney, 2 North Main Street, First Floor Courthouse, Cleburne, Texas, 76031, concerning whether a sheriff's authority to refuse to accept a bail bond executed by an attorney for a client the attorney represents in a criminal case is governed by article 2372p-3, V.T.C.S., or Code of Criminal Procedure articles 17.11, 17.13, and 17.14, also whether a sheriff may require an attorney or bondsman to post collateral; and related questions.

Summary. Attorneys may execute bail bonds for persons they actually represent in criminal cases without being licensed under article 2372p-3. See V.T.C.S. art. 2372p-3, 3(e). A sheriff must refuse to accept an attorney bail bond if the sheriff concludes that the attorney has "engag[ed] in the practices made the basis for revocation of [a] license" under article 2372p-3. See *id.* A sheriff's authority with respect to the sufficiency of the security offered by an attorney exempt from licensure under article 2372p-3 is governed by the Code of Criminal Procedure, articles 17.11, 17.13, and 17.14. Article 17.11

provides that "one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound." Articles 17.11, 17.13, and 17.14 grant a sheriff broad discretion to determine whether the security offered by an individual surety is sufficient, including the discretion to consider other bonds executed by the surety, but do not authorize a sheriff to require a surety to post collateral.

TRD-9814668
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: September 16, 1998



Request for Opinions

RQ-1179. Requested from Mr. John R. Speed, P.E. Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas, 78760-8329, concerning obligation of the Texas Board of Professional Engineers with regard to examinees covered by the Americans with Disabilities Act.

RQ-1180. Requested from Mr. John R. Speed, P.E. Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas, 78760-8329, concerning authority of the Board of Professional Engineers to require the registration of engineering firms.

RQ-1181. Requested from Mr. John R. Speed, P.E. Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas, 78760-8329, concerning whether the Board of Professional Engineers is required to determine if individuals seeking licensure in Texas are United States citizens or legal residents.

RQ-1182. Requested from The Honorable John Branson, Fisher County Auditor, P.O. Box 126, Roby, Texas, 79543, concerning authority of a commissioners court to order an independent audit.

RQ-1183. Requested from The Honorable Judith Zaffirini, Chair, Health and Human Services Committee, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, concerning whether an optician has any right of access to the records of an optometrist's patient.

RQ-1184. Requested from Mr. Doyne Bailey, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas, 78711-3127, concerning whether the Alcoholic Beverage Commission may authorize the use of machines that dispense alcoholic beverages by means of a PIN number.

RQ-1185. Requested from Mr. James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas, 78705, concerning whether section 1B of article 21.50,

Texas Insurance Code, has been superseded by the provisions of federal law.

TRD-9814528

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Filed: September 14, 1998



EMERGENCY RULES

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.13

The General Land Office adopts on an emergency basis new §15.13, concerning emergency provisions for the emergency stabilization and repair of damaged habitable structures in imminent danger of collapse located on property fronting the Gulf of Mexico. The General Land Office has identified areas where structures are in imminent danger of collapse in Galveston and Brazoria counties. Coastal local governments may identify other areas where habitable structures are in imminent danger of collapse and request authorization to allow emergency stabilization of habitable structures as authorized by this rule in subsection (h) after informing the General Land Office and the Office of the Attorney General of the identified areas. Upon receipt of such notification, the General Land Office and the Office of the Attorney General will send written notice of the eligibility of the identified areas. The section is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by high tides and erosion resulting from Tropical Storm Frances.

As a result of Tropical Storm Frances, September 9-12, 1998, extreme tides which greatly exceeded normal levels caused substantial coastal flooding and erosion. The structural integrity of many homes in Galveston and Brazoria counties has been severely impacted as a result of these natural forces.

Following the landfall of Tropical Storm Frances, concerned citizens along the Texas coast requested immediate assistance from the General Land Office. General Land Office staff met with local government staff and officials and determined the necessity for an emergency rule allowing for the emergency stabilization of habitable structures in imminent danger of collapse and providing for the temporary suspension of the permit and certificate application requirements for these emergency stabilization techniques and methods.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this amendment because the rule is adopted in response to a real and substan-

tial threat to public health, safety, and welfare. An analysis of the applicability of the exemption from the TIA requirement has been prepared and is available from Ms. Carol Milner, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495, facsimile number (512) 463-6311.

The new section is adopted on an emergency basis under the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provides the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas' public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other minimum measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new section is also adopted pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

§15.13. Emergency Stabilization of Habitable Structures in Imminent Danger of Collapse due to Extreme Tides as a result of Tropical Storm Frances, September 9-12, 1998.

(a) Purpose. The purpose of this rule is to allow local governments to grant property owners the immediate ability to undertake emergency stabilization of damaged habitable structures which are on property fronting the Gulf of Mexico and are in imminent danger of collapse due to extreme tides during Tropical Storm Frances.

(b) Applicability. This rule applies only to areas designated in this emergency rule or those areas that received approval from the General Land Office and Office of the Attorney General as provided in subsection (h) of this section. This rule shall be in effect for 30 days from the date of filing with the Office of the Secretary of State and may be extended by the Land Commissioner for additional 30-day periods as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

(1) Habitable structures. Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

(2) Imminent danger of collapse. Subject to imminent collapse, substantial structural damage, or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(3) Emergency stabilization. The immediate response actions that must be undertaken to stabilize a habitable structure to eliminate danger and public threat to health, safety and welfare.

(d) Local government assessment.

(1) The local governments with jurisdiction over areas where habitable structures in imminent danger of collapse are located are responsible for assessing damage to such habitable structures, determining whether the habitable structures are in imminent danger of collapse, advising property owners whether emergency stabilization procedures are required, and determining appropriate emergency stabilization procedures.

(2) The permit and certificate application requirements of §15.3(s)(4) of this title (relating to Administration) are not applicable to the emergency stabilization of habitable structures in imminent danger of collapse; however, all property owners eligible to undertake emergency stabilization efforts must receive prior approval for such actions from the local government officials responsible for approving such actions. Generally, property that is not fronting the Gulf of Mexico is not eligible for emergency stabilization unless the pertinent local government designates such eligibility pursuant to subsection (h) of this section (concerning expansion of geographic area). Any action that is not necessary for the emergency stabilization of such habitable structures will require a permit and/or certificate before such action is undertaken.

(3) The local governments authorizing emergency stabilization of structures in imminent danger of collapse shall compile and maintain a list of the names and addresses of the property owners that receive such authorization. Within one week of the expiration of this rule, local governments shall submit to the General Land Office and the Office of the Attorney General copies of the list.

(e) Acceptable procedures for emergency stabilization of habitable structures.

(1) Habitable structures determined by the local government to be in imminent danger of collapse may be temporarily stabilized using the following:

(A) fill (placed under habitable structures) consisting of beach-quality sand, clay and other locally approved "soft" materials that have a consistent grain size and that will compact to stabilize the habitable structure;

(B) the installation of new pilings; and/or

(C) other methods approved by local government officials.

(2) Beach-quality sand may be placed on the lot in the area five feet seaward of the habitable structure where necessary to prevent further erosion due to wind or water. Such actions are authorized in situations where protection of the land immediately seaward of a habitable structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(f) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. Local governments, therefore, shall coordinate with property owners to remove debris such as pilings, concrete and garbage from the public beach as soon as possible.

(g) Repair of sewage or septic systems. If the Texas Department of Health or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(h) Expansion of geographic area. Any local government may identify specific additional geographic areas within its jurisdiction along the Texas coast that require emergency stabilization of habitable structures in imminent danger of collapse as a result of Tropical Storm Frances and apply this emergency rule upon receipt of written concurrence from the General Land Office and the Office of the Attorney General.

(i) Prohibitions. This emergency rule does not authorize the placement of materials on the public beach or construction or repair of any erosion response structures, bulkheads, retaining walls, rip rap or other hard stabilization techniques. Such actions are prohibited and/or governed by §§15.1 - 15.10 of this title (relating to Management of the Beach/Dune System).

(j) Assessment of the location of the vegetation line. Due to the severe flooding caused by Tropical Storm Frances, the line of vegetation was impacted in many areas and now may be located across or landward of structures. Structures erected seaward of the vegetation line or that become seaward of the vegetation line due to natural processes encroach on the public beach. Under the circumstances immediately following this type of storm event, the vegetation line is unstable and subject to change. The Office of the Attorney General and the General Land Office, in cooperation with the pertinent local governments, will assess the location of the line of vegetation at a time to be determined in the future.

Filed with the Office of the Secretary of State, on September 14, 1998.

TRD-9814500

Garry Mauro

Commissioner

General Land Office

Effective date: September 14, 1998

Expiration date: October 14, 1998

For further information, please call: (512) 305-9129



Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

Division 3. Seasons and Bag Limits—Fishing Provisions

31 TAC §65.72

The Texas Parks and Wildlife department adopts by emergency action amendment to §65.72 concerning Fish. The action changes bag and possession limits for red snapper. Bag and

possession limits for red snapper are reduced to zero and are effective for the period September 30, 1998 through December 31, 1998.

In March 1997, the Texas Parks and Wildlife Commission delegated to the executive director the duties and responsibilities to take action as necessary to modify state coastal fisheries regulations to conform with federal regulations in the Exclusive Economic Zone, when such action is deemed to be in the best interest of the State of Texas.

These regulation changes for red snapper caught in state waters correspond to those regulations implemented by the Gulf of Mexico Fishery Management Council to be effective on September 30, 1998, for red snapper caught in federal waters where most of the red snapper fishery occurs. This would enhance conservation of the species, insure consistency in regulation enforcement and reduce confusion for anglers.

The emergency rule is adopted under authority of Parks and Wildlife Code, Uniform Wildlife Regulatory Act, Section 61.054 and Chapter 79, Extended Fishery Jurisdiction, Section 79.002.

§65.72. *Fish.*

- (a) (No change.)
- (b) Bag, possession, and length limits.

(1) (No change.)

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) (No change.)

(B) Statewide daily bag and length limits shall be as follows:

Figure: 31 TAC §65.72(b)(2)(B).

(C) (No change.)

(c) (No change.)

Filed with the Office of the Secretary of State, on September 10, 1998.

TRD-9814397

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: September 30, 1998

Expiration date: December 31, 1998

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



PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 30. Texas Agricultural Finance Authority: Young Farmer Loan Guarantee Program

Subchapter C. Interest Reduction Program Rules 4 TAC §§30.60–30.63

The Board of Directors of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture (the department) proposes new §§30.60-30.63, concerning the interest reduction program for the Young Farmer Loan Guarantee Program. The new sections are proposed to implement an interest reduction program for loans guaranteed under the Authority's Young Farmer Loan Guarantee Program, as authorized by the Texas Agriculture Code, §253.002(e). The new sections establish requirements and procedures for participation in the interest reduction program, including criteria for eligible participants, the rate and method of paying and to whom the interest reduction payment will be submitted, and criteria for borrower and lender participation in the program.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five-year period the new sections are in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Kennedy also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased efficiency and effectiveness of the loan program. There will be no effect on small or large 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 Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be

received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, 253.007(e), which provides that the Authority with the authority to adopt rules for implementation of an interest reduction program for loans guaranteed under the Young Farmer Loan Guarantee Program.

Texas Agriculture Code, Chapter 253, is affected by the proposal.

§30.60. Authority.

The Texas Agricultural Finance Authority is authorized by the Texas Agriculture Code (the Code), Chapters 58 and 253 to promulgate rules and procedures to establish the Young Farmer Loan Guarantee Program. Such rules, found in this chapter, include criteria by which financial assistance will be provided to eligible borrowers who are establishing their first farm or ranch operation. The Code, at §253.002, further provides for the Authority to establish an interest reduction program in which a payment from the Account may be provided to an approved applicant for a reduction in the amount of interest paid.

§30.61. Purpose and Application of Rules.

The purpose of this subchapter is to provide for the administration and payment from the Account of an interest reduction to an approved applicant under the Young Farmer Loan Guarantee Program. Existing participants in the Program are not automatically eligible to participate in the interest reduction program. To participate, an applicant must have been approved under the Program after September 1, 1997 and must meet the criteria stated in §30.63 of this title (relating to Interest Reduction Program Requirements and Procedures).

§30.62. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Account - The young farmer loan guarantee account in the general revenue fund of the state of Texas.

§30.63. Interest Reduction Program Requirements and Procedures.

(a) The interest rate charged by a lender to an approved applicant under the interest reduction program shall be set at the

date of closing at no more than low Wall Street Journal prime plus three percent for the term of the guarantee provided by the Authority.

(b) The interest reduction payment to an approved applicant shall be equal to three percent divided by the interest rate charged on the guaranteed loan times the guarantee percentage provided by the Authority on the loan (with the guaranteed percentage calculation rounded down to the nearest hundredth of a percent) times the actual interest paid to lender by the approved applicant.

(c) The interest reduction payment will be provided to the approved applicant only for the term and amount of the guarantee commitment provided by the Authority.

(d) An applicant and lender must meet and agree to all the criteria for the Program found in Subchapter A of this chapter (relating to Young Farmer Loan Guarantee Program General Procedures).

(e) For loans not yet approved by the Authority, the applicant and lender must indicate on the Program application form their desire to participate in the interest reduction program and must execute an agreement of such participation. For an existing, eligible loan, the applicant and lender must submit a written request for participation in the interest reduction program and execute a participation agreement. The agreement, provided by the Authority and which is separate and apart from the loan guarantee agreement for the Program, will provide the general terms and conditions of the guarantee commitment and the terms and conditions of the interest reduction payment.

(f) The participating lender must agree to provide the necessary information to the approved applicant to verify the interest payment on the guaranteed loan.

(g) The approved applicant must provide proper documentation to the Authority for verification of the interest payments to lender.

(h) Verification of interest payment(s) shall be by the submission of one or more of the following to the Authority:

(1) A payment remittance advice from lender that identifies the amount of the interest paid by the approved applicant on the guaranteed loan;

(2) A copy of lender's transaction history for the loan identifying the application of the payment; or

(3) Any other documentation required by the Authority that verifies the calculation of the total interest paid by the approved applicant on the guaranteed loan.

(i) The Authority will notify the approved applicant in writing if the verification documentation is deemed insufficient for processing.

(j) Within 30-days of receipt of proper verification documentation, the Authority will prepare and present documentation to the state comptroller's office for issuance of a voucher from the Account.

(k) The Authority will file appropriate federal tax statements each year as required by the Federal Tax Code.

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 September 9, 1998.

TRD-9814311

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: October 25, 1998

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

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TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Economic Development

Chapter 195. Memoranda of Understanding

10 TAC §§195.1-195.14

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

The Texas Department of Economic Development (Department) proposes the repeal of Chapter 195, §§195.1-195.14, in its entirety, concerning Memoranda of Understanding with the Texas Education Agency, Higher Education Coordinating Board, Texas Department of Human Services, Alternative Fuels Council, Texas Department of Housing and Community Affairs, Texas Parks and Wildlife Department, General Services Commission, Texas Department of Agriculture, Texas Historical Commission, Texas Employment Commission, Comptroller of Public Accounts, Texas General Land Office, Texas Department of Transportation and Texas Parks and Wildlife Department, and the Texas Natural Resource Conservation Commission. The repeal is necessary to accurately reflect current law and to allow the adoption of new rules. Senate Bill 932 of the 75th Legislature, which abolished the Texas Department of Commerce and created the Texas Department of Economic Development, also amended Government Code, §481.028(b), which applies to Memoranda of Understanding with various state agencies.

Robin Abbott, General Counsel, has determined that for each year of the first five-year period the section is in effect there will be no fiscal implications to state or local governments as a result of the repeal of the rules. No cost to either government or the public will result from the repeal of the rules. There will be no impact on small businesses. No economic cost is anticipated to persons as a result of the repeal of Chapter 195.

Ms. Abbott has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the rules will be the increased coordination and communication between the Department and other agencies involved with economic development with regard to program planning and budgeting. Reduced costs may result from the increased cooperation and communication since duplication of programs and services can be avoided. No economic costs are anticipated to persons who are required to comply with the proposed repeal.

Written comments on the proposed repeal should be submitted, within thirty days of publication of the proposed repeal, to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, for hand-deliveries, P.O. Box 12728, Austin, Texas 78711-2728, for US Mail, and (512) 936-0415 for Facsimiles.

The repeal of Chapter 195 is proposed under the authority of Texas Government Code, §481.0044(a) which gives the Department the authority to adopt rules to carry out its responsibilities; Texas Government Code, §481.028(d) which directs that the Memoranda of Understanding be adopted as rules of the agencies; and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Section 481.028 is affected by the proposed repeal.

§195.1. *Memoranda of Understanding with the Texas Education Agency.*

§195.2. *Memoranda of Understanding with the Higher Education Coordinating Board.*

§195.3. *Memoranda of Understanding with the Texas Department of Human Services.*

§195.4. *Memoranda of Understanding with the Alternative Fuels Council.*

§195.5. *Memoranda of Understanding with the Texas Department of Housing and Community Affairs.*

§195.6. *Memoranda of Understanding with the Texas Parks and Wildlife Department.*

§195.7. *Memoranda of Understanding with the General Services Commission.*

§195.8. *Memoranda of Understanding with the Texas Department of Agriculture.*

§195.9. *Memoranda of Understanding with the Texas Historical Commission.*

§195.10. *Memoranda of Understanding with the Texas Employment Commission.*

§195.11. *Memoranda of Understanding with the Comptroller of Public Accounts.*

§195.12. *Memoranda of Understanding with the Texas General Land Office.*

§195.13. *Memoranda of Understanding with the Texas Department of Transportation and the Texas Parks and Wildlife Department.*

§195.14. *Memoranda of Understanding with the Texas Natural Resource Conservation Commission.*

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

Filed with the Office of the Secretary of State, on September 10, 1998.

TRD-9814353

Gary Rosenquest

Chief Administrative Officer

Texas Department of Economic Development

Earliest possible date of adoption: October 25, 1998

For further information, please call: (512) 936-0181



10 TAC §§195.1-195.10

The Department proposes new Chapter 195. Sections 195.1-195.10, concerning Memoranda of Understanding with the Department of Agriculture, Texas Workforce Commission, General Land Office, Texas Department of Housing and Community Affairs, Comptroller of Public Accounts, Texas Department of Transportation, Parks and Wildlife Department, Texas Natural

Resource Conservation Commission, Texas Historical Commission, General Services Commission, Alternative Fuels Council, and Texas Agricultural Finance Authority. Texas Government Code, §481.028, requires that the Department enter into a memoranda of understanding with other state agencies involved in economic development to cooperate in planning and budgeting. Texas Government Code, §481.028, further directs that the Memoranda of Understanding be adopted as rules of the agencies.

Robin Abbott, General Counsel for the Department, has determined that for each year of the first five-year period the rules are in effect there will be fiscal implications for state government as a result of enforcing or administering the rules. The Department cannot quantify the exact cost to the state which will be associated with the increased cooperation in planning and budgeting since it depends upon the extent of specific agreements between the agencies. The Department anticipates the costs of the proposed rules will be more than offset by the public benefit that will occur from the increased cooperation between agencies with responsibility for economic development in Texas.

Ms. Abbott has determined that there will be no effect on local government as a result of enforcing the proposed rules. She has also determined that there will be no significant economic impact on local economies or overall employment as a result of administering the proposed rules.

Ms. Abbott has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the increased coordination and communication between the Department and other agencies involved with economic development with regard to program planning and budgeting. Reduced costs may result from the increased cooperation and communication since duplication of programs and services can be avoided. No economic costs are anticipated to persons who are required to comply with the proposed rules.

Written comments on the proposed rules should be submitted, within 30 days of publication of the proposed rules, to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, for hand-deliveries, P. O. Box 12728, Austin, Texas 78711-2728, for US Mail, and (512) 936-0415 for Facsimiles.

Sections 195.1-195.10 are proposed under the authority of Texas Government Code, §481.0044(a) which gives the Department the authority to adopt rules to carry out its responsibilities; Texas Government Code, §481.028(d) which directs that the Memoranda of Understanding be adopted as rules of the agencies; and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Section 481.028 is affected by the proposed rules.

§195.1. Memoranda of Understanding with the Texas Department of Agriculture and the Texas Agricultural Finance Authority.

(a) Purpose. The purpose of this memorandum of understanding is to meet the legislative mandates pursuant to Texas Government Code §§481.028(b)(1) and 481.029(b)(12) relating to increasing the cooperation, coordination and sharing of economic development responsibilities between the Texas Department of Agriculture (TDA), the Texas Agricultural Finance Authority (TAF), and the Texas Department of Economic Development (TDED). Section 481.028(b)(1) requires a memorandum of understanding between the Texas Depart-

ment of Agriculture and the Texas Department of Economic Development regarding the respective agencies' international marketing and business finance programs. Section 418.028 (b)(12) requires a memorandum of understanding between the Texas Agriculture Finance Authority and the Texas Department of Economic Development regarding the marketing of the TAFE programs.

(b) Mutual Responsibilities. To efficiently serve the citizens of Texas and promote economic growth in the agricultural industry, the agencies involved in this memorandum agree to cooperate in the following areas. The Texas Department of Agriculture will coordinate international marketing and business development programs involved in livestock, food, fiber, horticulture, forestry and other related agricultural industries in order to utilize the best available expertise. The Texas Department of Economic Development will forward appropriate requests for assistance in these areas to TDA for lead facilitation. TDA will engage the assistance of the Texas Department of Economic Development where applicable. The Texas Agricultural Finance Authority, with the administrative assistance of the Texas Department of Agriculture, will administer its finance programs involving agriculture, horticulture, and related industries so as to best utilize the expertise of the agency. The Texas Department of Economic Development will forward all requests for assistance in these areas to TDA and/or TAFE for business development assistance. Neither the Texas Department of Agriculture nor the Texas Agricultural Finance Authority will duplicate the current fee-based services of the Texas Department of Economic Development. These services include but are not limited to loan packaging, feasibility studies or credit analysis. TDA and TAFE will perform credit analysis as it relates to projects seeking participation in any of the programs administered by TAFE. TDED will coordinate with TDA on any loan packaging or feasibility studies relating to agriculture but not specifically using TDA or TAFE programs. The Texas Department of Economic Development will cooperate and assist in marketing and promoting the finance programs administered by the Texas Agricultural Finance Authority. TDED will also coordinate all regional economic planning for the state and will include TDA and TAFE where applicable. The Texas Department of Economic Development will coordinate all non-agricultural business development, marketing and finance activities, so as to best utilize the agency's expertise. The Texas Department of Agriculture, the Texas Agricultural Finance Authority and the Texas Department of Economic Development will cooperate to foster economic development in Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by the representatives of each agency, shall terminate August 31, 1999 unless extended by mutual agreement of the parties.

§195.2. Memorandum of Understanding with the Texas Workforce Commission.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Workforce Commission enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting regarding the skills development fund, and the dissemination of employment-related data, statistics, and analyses, and the use of field offices to distribute information of interest to businesses and communities in the state, including applications for Smart Jobs grants.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning in accordance with legislation and share information regarding workforce training grants and marketing efforts; cooperate in the distribution of information

relating to the Smart Jobs Fund through municipal and county offices of economic development, Local Workforce Development Boards, Chambers of Commerce, and Economic Development Corporations; cooperate to encourage workforce and economic development and employment within Texas and share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding.

(c) Term. This Memorandum of Understanding shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.3. Memorandum of Understanding with the Texas General Land Office.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas General Land Office enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to rural economic development.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning within Texas; coordinate the rural economic development programs provided by each agency; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development within rural areas of Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.4. Memorandum of Understanding with the Texas Department of Housing and Community Affairs.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Department of Housing and Community Affairs enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to their community development programs.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning within Texas; cooperate in developing and implementing community development programs; cooperate to encourage economic and community development in Texas; share information of mutual interest; and develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.5 Memorandum of Understanding Between the Texas Department of Economic Development and the Comptroller of Public Accounts.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development (Department) and the Comptroller of Public Accounts (CPA) enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to the dissemination of economic data, statistics, and analyses and the use of field offices to distribute information to businesses and local communities in the state.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate in program planning and budgeting relating to the dissemination of economic data, statistics, and analyses and the use of field offices to distribute information to businesses and local communities in the state; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 1999 unless extended by the mutual agreement of the parties.

§195.6. Memorandum of Understanding with the Texas Department of Transportation and the Texas Parks and Wildlife Department.

(a) Parties. Pursuant to Texas Government Code §481.028(5), this memorandum of understanding is made and entered into by and between the Texas Department of Economic Development (Department), the Texas Department of Transportation (TxDOT) and the Texas Parks and Wildlife Department (TPWD) to formalize their agreement to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers.

(b) Recitals. The Department, TxDOT and TPWD are the three major state agencies responsible for promoting travel and tourism in Texas. Texas Government Code §181.172 sets forth the responsibilities of the Department in promoting Texas as a tourist destination. Texas Government Code §181.172(5) and (6) direct that the Department cooperate with TxDOT and TPWD in tourism matters. Texas Government Code §181.122(b)(1) requires the Department to promote Texas as an attraction for tourism. Article 6144(e), Texas Civil Statutes (1995) authorizes TxDOT to publish such pamphlets, bulletins, maps and documents as it deems necessary to serve the motoring public and road users. Article 6144(e) requires TxDOT to maintain and operate Travel Information Bureaus at the principal gateways to Texas to provide road information, travel guidance and various descriptive materials designed to aid and assist the traveling public and to stimulate travel to and within Texas. Parks and Wildlife Code §§11.033(2), 11.054(a)(1), 13.017(a) and 31.002 authorize TPWD to expend certain funds and provide certain information to the public relating to wildlife management, nongame and endangered species conservation, public parks and water safety.

(c) Undertakings by each Party. The parties agree to cooperate on developing and promoting Texas as a premier travel destination in fourteen subject areas. The subject areas and each agency's responsibilities are as follows:

(1) Marketing. The Department, TxDOT and TPWD will form a tri-agency marketing group that will develop guidelines and policies to encourage the use of a unified travel and tourism marketing theme for the state. The current theme is "Texas. It's Like a Whole Other Country." The tri-agency marketing group will be comprised of the Executive Directors of the three agencies or their designees. Other staff members from the three agencies may be brought into the meetings of the tri-agency marketing group to provide expertise on certain issues. These other staff members, however, will not have decision-making authority. The tri-agency marketing group will meet quarterly. Decisions of the tri-agency marketing group will be made by consensus. The mission of the tri-agency marketing group will be to guide and coordinate the statewide travel-related advertisements, promotions, media relations and collateral pieces of the three agencies. The tri-agency marketing group will advise and make recommendations on the appropriate tone and message for the marketing efforts of the three agencies. Each agency will pay for

its own marketing and promotional activities. Each agency will be responsible for ensuring that its statewide marketing, promotional, and informational materials use the consistent message developed and adhere to the guidelines established by the tri-agency marketing group. The Department owns the trademark to "Texas. It's Like a Whole Other Country." The Department will develop a licensing agreement with TxDOT and TPWD to allow them to use this trademarked theme.

(2) Magazines. The magazine staffs of Texas Highways and Texas Parks & Wildlife and the media staff from the Department will meet at least twice a year to address opportunities that promise to enhance Texas travel and tourism through these two magazines. Information of mutual interest and opportunities for sharing resources will be included in these meetings.

(3) Ancillary Products. TPWD currently offers a variety of Texas-specific ancillary products through a catalog. TxDOT and the Department are investigating the production of ancillary products. The Department, TxDOT, and TPWD will explore producing one Texas state catalog of consumer ancillary merchandise. The tri-agency marketing group will recommend methods to ensure the agencies share appropriate revenues and costs from the catalog operations. In addition, the three agencies agree to investigate the expansion of sales outlets for the ancillary products from all three agencies. Each of the three agencies may continue to independently promote sales of its own merchandise.

(4) TOURTEX 2000. TxDOT serves as the lead agency in developing and managing the TOURTEX 2000 electronic information system. TxDOT will operate and be responsible for the financial support of TOURTEX 2000. TxDOT will solicit partnerships for the system with local chambers of commerce, convention and visitors bureaus or city tourism offices. The Department will assist TxDOT in the development of a trade component for the system so that detailed information for tour operators and travel agents may be provided electronically. All three agencies agree to investigate additional methods of marketing and other potential outlets for the travel information.

(5) Travel Information Centers. TxDOT will continue to operate and fund TxDOT's existing travel information centers. TxDOT will continue providing collateral materials and advice to city information centers in an effort to expand state traveler information throughout Texas. TPWD will consider using facilities at state parks as distribution points for travel information. The Department and TPWD will support the development of the travel information centers and may provide information to them when appropriate.

(6) Photo Files. The Department, TxDOT and TPWD will establish a single photo library that will house a majority of images owned by the three agencies. This will be an ADA compatible "one stop shop" for public use. The photo library may be housed in one of the agency's existing libraries or in a separate location. The facility housing this collection should meet ANSI (American National Standards Institute) standards for storage and preservation of photographic materials. Each agency may retain some images specific to its marketing campaigns, magazines and promotions. In addition, each agency will retain its own historical or documentary photos pertaining to its mission and history.

(7) Shows. The tri-agency marketing group will develop a comprehensive marketing plan for the three agencies' participation in various consumer and travel trade shows/initiatives. These shows may be in-state, out-of-state, or international. The tri-agency marketing group will decide upon the show schedule prior to fiscal year budget planning deadlines. Each of the three agencies may play a role in

staffing the shows, depending upon each agency's focus and budget restrictions. Each agency will be responsible for its participation costs at such trade shows. The agencies will use a unified travel and tourism marketing theme in a manner appropriate for each show. Texas ancillary products and magazines may be promoted at these shows. The Department will be the prime Texas representative at out-of-state and international trade shows. TxDOT and TPWD may participate at other shows with collateral materials and staff where appropriate.

(8) Research/Information Sharing. The three agencies will meet quarterly to discuss research workplans and projects to ensure that the State's research is comprehensive and appropriate to guide the marketing and promotional activities of the three agencies. The Department will take the lead in conducting and gathering Texas tourism research. TxDOT and TPWD may conduct other research independently. Each agency will pay for its own research or share costs as may be identified in the research workplans. The three agencies will distribute their new research publications, as they are completed and become available, to the other agencies.

(9) Community Profiles. The Department maintains a computer database containing community profiles for use by communities seeking business prospects or funding from public and private sources. The Department will continue to develop this system and will provide TxDOT and TPWD access to it.

(10) Community Education/Training. The Department will take the lead in organizing community training and education for tourism development. TxDOT and TPWD will assist in the organization and sponsorship of these community training sessions, together with other state, regional and local organizations. Training sessions may include nature tourism, hospitality training, development and funding techniques and the integration of existing training offered by TxDOT to its travel counselors. In addition, the Department will assist communities through development booklets, tip sheets and basic counseling/assistance over the telephone. TPWD will offer nature tourism outreach and assistance through various means.

(11) Tourism Business Assistance. The Department will play a lead role in providing information and contacts to companies and individuals seeking to develop tourism-related properties and attractions. TxDOT and TPWD may provide expertise in this area when needed.

(12) 1-800 Numbers. The Department, TxDOT and TPWD each maintain toll-free telephone numbers for different purposes (advertising fulfillment, travel counseling and weather conditions, etc.). The three agencies will investigate the feasibility of combining some of these lines. In addition, the three agencies will form a team of individuals from the entities involved in the operation of the State's main 1-800 number (1-800-8888-TEX). This main 1-800 line handles inquiries to the State's tourism advertising campaign. This team will work to ensure the efficient operation of the 1-800 number and coordinate activities between the 1-800 number and fulfillment operations.

(13) Fulfillment Operation. Fulfillment refers to the act of responding to a request for consumer travel information. TxDOT serves as the lead agency in travel literature fulfillment. TxDOT will manage the State's main fulfillment operation, providing information to inquiries generated by the State's advertising and other marketing efforts. These inquiries may be from phone calls, coupons, tip-in cards or other means. The Department will provide TxDOT with quality inquiries from tip-in cards and the main 1-800 number line in a timely fashion for TxDOT to fulfill. The three agencies agree that the level of the State's advertising program has budget implications

for each of the agencies. Because the volume of travel literature requests directly drives TxDOT's budget expenditure in production and fulfillment operations, the three agencies agree to make the best possible projections of annual fulfillments so that accurate budgets may be formulated. TxDOT will manage and pay for materials, postage and labor for the fulfillment of inquiries from the general public. The Department will manage and pay for postage and labor to fulfill inquiries generated from travel trade marketing efforts. TxDOT will pay only for TxDOT-produced travel literature for travel trade inquiries. As the lead fulfillment agency, TxDOT is responsible for the final accuracy and management of the master data file. Until all daily file corrections have been made, none of the three agencies will use the data for statistical or reporting purposes. Only correct and complete data entries will be loaded onto the TRAX database. This fulfillment operation agreement does not provide for any magazine or ancillary products fulfillment operations.

(14) Collateral Materials. TxDOT will provide a Travel Literature Unit to produce most travel- and tourism-related publications required by the Department, TxDOT and TPWD. This unit will be composed of TxDOT employees who will work directly with individuals from the three agencies to ensure that the pieces meet the needs of their intended audiences, are completed in a timely manner and fall within budget. The three agencies agree that TxDOT's Travel Literature Unit must be kept informed about budgeted publications of all three agencies early enough to incorporate resource needs. A means of timely and accurate communication of this information will be established by the tri-agency marketing group. Examples of tasks performed by the TxDOT unit include: writing specifications for contracting outside services, setting deadlines, editing, designing, and overseeing quality control of the publications. Advertising sales will remain with each respective agency. The tri-agency marketing group will provide general guidance towards maintaining consistency among all Texas travel publications, while allowing for differentiated attributes necessary for individual pieces to meet their intended purposes. The tri-agency marketing group will recommend appropriate methods to ensure equitable agency contributions to TxDOT of the costs of shared resources and indirect costs of each agency's own publications. The tri-agency group also will resolve any problems concerning the application of available resources and completion dates for various publication projects. Each agency reserves the right to produce its own collateral materials when desired or appropriate.

(d) Term. This MOU, which is effective upon execution by representatives of each agency, shall terminate on August 31, 1999 unless terminated earlier pursuant to Section V or unless extended by the mutual agreement of the parties.

(e) Termination. Any of the three agencies shall have the right, in such agency's sole discretion, and at such agency's sole option, to terminate and bring to an end all performances to be rendered under this agreement, such termination to be effective 60 days after receipt of written notification by the other parties.

(f) Amendments and Changes. Any alteration, addition, or deletion to the terms of this agreement shall be by amendment hereto in writing and executed by all three parties, except as may be expressly provided for in some manner by the terms of this agreement.

(g) Adoption as Rule. Each agency shall adopt this MOU as a rule in compliance with §481.028, Texas Government Code.

(h) Compliance with Laws and Budgetary Constraints. The obligations of the parties in carrying out the provisions of this MOU are subject to the statutory authority of each agency, all other applicable laws and the appropriations available to each agency to accomplish the purposes set forth herein.

§195.7. Memorandum of Understanding with the Texas Natural Resource Conservation Commission.

(a) Need for Agreement. Texas Health and Safety Code §382.0365(e) directs the Texas Natural Resource Conservation Commission (TNRCC) to enter into a Memorandum of Understanding (MOU) with the Texas Department of Economic Development (Department) to coordinate assistance to any small business applying for permits from the Commission. Texas Government Code §481.028(b)(6) directs the Department to develop an MOU with the TNRCC to cooperate in program planning and budgeting regarding small business finance and permits, the marketing of recyclable products, and business permits.

(b) Responsibilities.

(1) The TNRCC:

(A) is the agency of the state given primary responsibility for implementing the Constitution and laws of this state relating to the conservation of natural resources and the protection of the environment;

(B) sets standards, criteria, levels, and limits for pollution to protect the air and water quality of the state's natural resources and the health and safety of the state's citizens;

(C) protects the air, land, and water resources through the development, implementation, and enforcement of control programs as necessary to satisfy all federal and state environmental laws and regulations;

(D) maintains a Small Business Assistance Program as defined in Texas Health and Safety Code §382.0365;

(E) establishes programs designed to encourage Texas businesses to reduce, reuse and recycle industrial and hazardous wastes; and

(F) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(2) The Department:

(A) is the state agency designated to promote economic development and tourism and provide business services for small business owners;

(B) serves as an information center and referral agency for information on various state and federal programs affecting small businesses, including local governments, local economic development organizations, and small business development centers to promote business development in the state;

(C) supports small business ownership and development for the state;

(D) collects, publishes, and disseminates information useful to small businesses including data on employment and business activities and trends; and

(E) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(c) Activities

(1) The TNRCC will, in a timely manner:

(A) refer small business owners to the Department for information on financial and loan assistance and business licenses,

permits, registrations, or certificates necessary to operate a place of business in Texas;

(B) provide the Department with information regarding environmental permitting processes, registration timelines, fee schedules, reporting requirements, pollution prevention techniques; as well as scheduled workshops, seminars, and conferences that educate small businesses on environmental concerns;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the Department;

(D) maintain current information supplied by the Department on financial and loan assistance and business licenses, permits, registrations, or certificates necessary to operate a place of business in Texas;

(E) research the requirements and costs of pollution control equipment and environmental audits needed by small businesses for compliance with environmental regulations;

(F) train Department staff, as requested and subject to staff availability, on environmental regulations, environmental management techniques, and pollution prevention and recycling practices that apply to small businesses;

(G) share information with the Department to ensure non-duplication of agency efforts;

(H) provide the necessary permit applications and forms to the Department, upon request, so that the Department may complete a comprehensive application request by a business; and

(I) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the Department any report required by Texas Government Code, §481.129.

(2) The Department will, in a timely manner:

(A) refer small business owners and prospective owners to the TNRCC Small Business Assistance Program for help with environmental permitting, registration, compliance, and reporting requirements and pollution prevention techniques;

(B) provide information to the TNRCC regarding information on financial and loan assistance and business licenses, permits, registrations, or certificates necessary to operate a place of business in Texas;

(C) provide speakers and educational materials, as requested and subject to staff availability for seminars, conferences, and workshops sponsored by the TNRCC;

(D) maintain current information supplied by the TNRCC on the application process and timelines for environmental permits, registrations, certifications, or other general environmental compliance information needed to operate a place of business in Texas;

(E) incorporate the TNRCC information concerning business' rights, obligations, and requirements under environmental regulations into the general material distributed by the Department to people establishing business operations in Texas;

(F) identify and provide information to the TNRCC on financial assistance programs that make loans to small businesses for the purchase of new equipment or process upgrades necessary to operate in compliance with environmental regulations;

(G) serve as a point of contact, when requested, between the TNRCC and the Small Business Administration, Farmers

Home Administration, the Small Business Development Centers, the Texas Manufacturing Assistance Centers, Community Development Corporations, and other business and financial assistance programs;

(H) maintain the information produced by the TNRCC about the impacts of environmental regulations on the state's economy and small business community;

(I) share information with the TNRCC to ensure non-duplication of agency efforts; and

(J) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly any report required by Texas Government Code, §481.129.

(d) Review of MOU. This memorandum shall terminate August 31, 1999 unless extended by mutual agreement. the TNRCC and the Department by rule shall adopt the memorandum and all revisions to the memorandum.

§195.8. Memorandum of Understanding with the Texas Historical Commission.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Historical Commission enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to community preservation, restoration and revitalization.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional economic planning within Texas; cooperate regarding community preservation, restoration and revitalization efforts; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development and employment in Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 1999 unless extended by the mutual agreement of the parties.

§195.9. Memorandum of Understanding with the General Services Commission.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the General Services Commission enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to procurement information, certification and technical assistance to small and historically underutilized businesses.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional economic planning within Texas; cooperate in providing procurement information, certification and technical assistance to small and historically underutilized businesses; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development within Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.10. Memorandum of Understanding with the Texas Alternative Fuels Council.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Alternative Fuels Council enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to the promotion of the use of alternative fuels within Texas.

(b) Mutual Responsibilities: To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning within Texas; cooperate in encouraging the use of alternative fuels within Texas; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development in Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

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

Filed with the Office of the Secretary of State, on September 10, 1998.

TRD-9814352

Gary Rosenquest

Chief Administrative Officer

Texas Department of Economic Development

Earliest possible date of adoption: October 25, 1998

For further information, please call: (512) 936-0181

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter D. Records, Reports, and Other Required Information

16 TAC §25.84

The Public Utility Commission of Texas (PUC) proposes new §25.84, relating to Annual Reporting of Affiliate Transactions for Electric Utilities. This section is proposed under Project Number 17549. Section 25.84 replaces the rule provision formerly located at §23.11(c) of this title, relating to General Reports, and requires that electric utilities report to the commission annually on affiliate activities.

The commission seeks comments from interested parties on the proposed rule. Parties are encouraged to provide specific rule language where applicable. The commission will seek comment at a later date on the format and substance of the annual reports required in proposed §25.84.

Suzanne L. Bertin, Assistant Director, Office of Policy Development, 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 sections.

Ms. Bertin 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 this section will be the continuation of effective regulatory oversight of electric utilities.

The proposed section replaces the rule provision formerly located at §23.11(c). It is anticipated that there will be minimal economic costs incurred by persons required to comply with the new section in addition to costs already imposed by former §23.11(c).

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

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

Comments on the proposed rule (16 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 17549. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the sections. The commission will consider the costs and benefits in deciding whether to adopt the sections.

Pursuant to Texas Government Code §2001.029, the commission staff will conduct a public hearing on this rulemaking if a public hearing is requested by: at least 25 persons; a governmental subdivision or agency; or an association having at least 25 members.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA) §§14.001, 14.002, 14.003, and 14.151. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission authority to require submission of information by the utility regarding its affiliate activities. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151.

§25.84. Annual Reporting of Affiliate Transactions for Electric Utilities.

(a) Purpose. This section establishes annual reporting requirements for transactions between electric utilities and their affiliates.

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

(c) Annual report of affiliate activities. A "Report of Affiliate Activities" shall be filed annually with the commission. Using forms

approved and provided by the commission, an electric utility shall report activities among itself and its affiliates. The report shall be filed by June 1, and shall encompass the period from January 1 through December 31 of the immediately preceding year.

(d) Copies of contracts or agreements. An electric utility shall reduce to writing and file with the commission copies of any contracts or agreements it has with its affiliates. The requirements of this subsection are not satisfied by the filing of an earnings report.

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 September 14, 1998.

TRD-9814477

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 25, 1998

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

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 271. Examinations

22 TAC §271.1

The Texas Optometry Board proposes the adoption of an amendment to §271.1, regarding definitions under Chapter 271. Examinations. The amendment, if adopted, will correct existing rule language by replacing the term APTRA with the correct term for APA.

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

Lois Ewald also has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the amended rule is that the general public will be informed of the correct and applicable legal cite and because the amendment to the rule does not require any additional duties for optometrists, there are no anticipated economic costs to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Articles 4552-2.14, 4552-4.04, and 4552-4.05.

The Texas Optometry Board interprets §2.14 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §4.04 and §4.05 to provide for the disciplinary procedural process.

Texas Civil Statute, Article 4552-2.14, is affected by this proposed action.

§271.1. *Definitions.*

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) Respondent—A person against whom a formal charge has been made alleging conduct that violates the Act or rules, regulations, or orders of the board and whose legal rights are to be determined by the board after the opportunity for an adjudicative hearing in a contested case as defined by the APA [APTRA].

(8) (No change.)

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

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

TRD-9814444

Lois Ewald

Executive Director

Texas Optometry Board

Proposed date of adoption: November 13, 1998

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



Chapter 279. Interpretations

22 TAC §279.17

The Texas Optometry Board proposes the adoption of a new rule §279.17. The new rule, if adopted, will define the term surgery in the same manner as previously defined by an Opinion issued by the Office of the Attorney General.

Lois Ewald, Executive Director, of the Texas Optometry Board, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the new rule. The new rule imposes no duties on small businesses, and thus there will be no economic effect on small businesses.

Lois Ewald also has determined that for the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the new rule is that therapeutic optometrists and the public will have a clear understanding of the procedures available to therapeutic optometrists. Defining surgery as previously defined in an opinion of the Attorney General will not create any additional duties for therapeutic optometrists, and thus there is no anticipated economic cost to persons required to comply with the amendments as proposed.

Comments on the proposal may be submitted in writing to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe St., Suite 2-240, Austin, Texas, 78701-3942.

The new rule is proposed under the authority of the Texas Optometry Act, Texas Revised Civil Statutes, Article 4552-2.14 and 4552-1.02.

The Texas Optometry Board interprets §2.14 as authorizing the adoption of the procedural and substantive rules for the regulation of the optometric profession. The Board interprets

§1.02 as defining the procedures that may be employed by therapeutic optometrists.

Texas Revised Civil Statutes Article 4552-1.92 is affected by the proposed new rule.

§279.17. *Board Interpretation Number Seventeen.*

(a) The Texas Optometry Act, Section 1.02(7) relating to the definition of the "practice of therapeutic optometry" states: The "practice of therapeutic optometry" means the employment of objective or subjective means for the purpose of ascertaining and measuring the powers of vision of the human eye, examining and diagnosing visual defects, abnormal conditions, and diseases of the human eye and adnexa, prescribing or fitting lenses or prisms to correct or remedy a defect or abnormal condition of vision, administering or prescribing a drug or physical treatment in the manner authorized by this Act, and treating the eye and adnexa as authorized by this Act without the use of surgery or laser surgery.

(b) Surgery means only cutting operations.

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 September 11, 1998.

TRD-9814443

Lois Ewald

Executive Director

Texas Optometry Board

Proposed date of adoption: November 13, 1998

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



Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

Subchapter A. Introduction

22 TAC §741.2

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.2, 741.87, 741.142, 741.162, 741.163, 741.164, 741.165, 741.181 and new 741.201, concerning speech-language pathology and audiology. Specifically, the sections cover definitions; 30-day trial period associated with hearing instruments; license issuance and renewal procedures; inactive status; audit for compliance with continuing education requirements; and schedule of fees. The new section establishes a schedule of sanctions.

The proposed amendments cover all definitions which are being listed with numbers in new *Texas Register* format required by 1 Texas Administrative Code, §91.1, effective February 17, 1998; add the term "delegation" to definitions; remove 500 hertz from the definition of "Extended recheck" to coincide with language in §741.32 relating to Hearing Screening; clarify that the purchaser of a hearing instrument will have 30 consecutive days within a 60-day time period to determine if the instrument is satisfactory and renumber accordingly; clarify how an initial license is issued once the application and initial license fees

are combined under §741.181 relating to Schedule of Fees and renumber accordingly; revise the renewal procedures by removing the notarization requirement from the renewal form, establishing a random audit for compliance with the continuing education requirement for license renewal, combining the fitting and dispensing of a hearing instrument renewal registration with the license renewal form, and clarifying the registration renewal procedures and renumbering accordingly; expand the acceptable verification of continuing education events to include a form from the presenter of the event; establish procedures to conduct a random audit for compliance with the continuing education requirement, for licensees to personally maintain their continuing education records and grounds for disciplinary action; clarify that a licensee who wishes to renew a license after expiration of the grace period must submit proof of continuing education hours; combine the application fee with the initial license fee to expedite issuance of a license; require payment of a fee for license verification; and increase various fees necessary in order to cover the cost of administering the licensing program. The new section establishes a schedule of sanctions to be utilized in disciplinary actions concerning violations of the Act or rules.

Dorothy Cawthon, Executive Secretary, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections: new and increased fees are projected to generate additional revenues of \$49,747 per year for state government, which will be used to offset the cost of administering the program. There may be fiscal implications to state or local government as a result of enforcing or administering the sections as proposed: exact dollar amount cannot be determined because it is not known whether a state or local agency reimburses the cost of their employee's licensing fees.

Ms. Cawthon also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to cover the cost of administering the program and establish a schedule of sanctions. The amendments to remove the notarization from the renewal form and to combine the fitting and dispensing of hearing instruments registration with the renewal form will streamline the renewal process. The amendments relating to the audit for the compliance with the continuing education requirements will allow the board to monitor this requirement without hiring additional staff. The current system is not cost-effective and statistics show that an audit is 95% accurate. The amendment to expand what is acceptable verification of continuing education events will benefit licensees who obtain the forms from the presenter following the event and, therefore, not have to wait several weeks to receive the verification from the sponsor. The amendment to combine the application fee and the initial license fee will speed up the licensing process by two to four weeks and the fee to provide verification of a license will cover the cost of providing this service. The remaining amendments clarify existing language concerning delegation of duties to assistants, extended recheck, the 30-day trial period associated with the purchase of a hearing instrument, and clarify submission of continuing education for licenses after expiration of the grace period or licenses on inactive status. These clarifications should provide licensees, employers and the public a better understanding of the rules. There will be minimal economic costs to small businesses and individuals engaged in the business of speech-language pathology or audiology because of the increase in their licensing fees. The

cost between large and small businesses would depend on the number of licensees employed. There should be no effect on local employment.

Comments on the proposal may be submitted to Dorothy Cawthon, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (512) 834-6627. Public comments will be accepted for 30 days following the publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j and Texas Civil Statutes, Article 4512j, and §20 which provides the Board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

The proposed amendment affects Texas Civil Statutes, Article 4512j.

§741.2. *Definitions.*

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

(1) Act - The law relating to the licensing and regulation of speech-language pathologists and audiologists, Texas Civil Statutes, Article 4512j.

(2) Assistant in audiology - An individual who works under the direct on-site supervision and direction of a licensed audiologist and is licensed under §741.85 of this title (relating to Requirements for an Assistant in Audiology License).

(3) Assistant in speech-language pathology - An individual who works under the direct, on-site supervision and direction of a licensed speech-language pathologist and is licensed under §741.65 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License).

(4) Audiologist - An individual who meets the requirements of Subchapter H of this chapter (relating to Application Procedures) and holds a valid license to practice audiology.

(5) Board - The State Board of Examiners for Speech-Language Pathology and Audiology.

(6) Delegation - The supervisor of an assistant may assign certain services to the assistant; however, the supervisor is ultimately responsible for all services provided.

(7) Department - The Texas Department of Health.

(8) Ear specialist - A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

(9) Extended absence - More than two consecutive working days for any single continuing education experience.

(10) Extended recheck - Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are [500,] 1,000, 2,000, and 4,000 hertz (Hz).

(11) Health care professional - An individual required to be licensed or registered by this Act or any person licensed, certified, or registered by the state in a health-related profession.

(12) Hearing instrument - A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing.

(13) Hearing screening - A manually administered individual pure-tone air conduction screening with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(14) Intern in audiology - An individual completing the supervised professional experience as required by §741.81(12) of this title (relating to Requirements for an Audiology License) and licensed under §741.82 of this title (relating to Requirements for an Intern in Audiology License).

(15) Intern in speech-language pathology - An individual completing the supervised professional experience as required by §741.61(12) of this title (relating to Requirements for a Speech-Language Pathology License) and licensed under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(16) License - The document required by the Act which provides verification that an individual has met the requirements for qualification and practice as set forth in the Act and as interpreted within this chapter.

(17) Month - A calendar month.

(18) Person - An individual, a corporation, partnership, or other legal entity.

(19) Practice of audiology - The application of nonmedical principles, methods and procedures for the measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of rendering or offering to render services or for participating in the planning, directing or conducting of programs which are designed to modify communicative disorders involving speech, language, auditory or vestibular function, or other aberrant behavior relating to hearing loss. An audiologist may engage in any tasks, procedures, acts, or practices that are necessary for the evaluation of hearing, for training in the use of amplification including hearing instrument, for the making of earmolds for hearing instrument, for the fitting, dispensing, and sale of hearing instrument or for the management of cerumen. An audiologist may participate in consultation regarding noise control and hearing conservation, may provide evaluations of environment or equipment including calibration of equipment used in testing auditory functioning and hearing conservation, and may perform the basic speech and language screening tests and procedures consistent with his or her training.

(20) Practice of speech-language pathology - The application of nonmedical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of rendering or offering to render services or for participating in the planning, directing or conducting of programs which are designed to modify communicative disorders and conditions in individuals or groups of individuals. Speech-language pathologists may perform basic audiometric screen-

ing tests and aural rehabilitation or habilitation consistent with his or her training.

(21) Provisional license - A nonrenewable license issued to an applicant who meets the requirements of §741.64 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.84 of this title (relating to Requirements for a Provisional Audiology License).

(22) Registrant - An individual issued a temporary certificate of registration or a registration to fit and dispense hearing instruments.

(23) Registration to fit and dispense hearing instruments - A registration issued to an audiologist or intern in audiology licensed under this Act who completed a form received from the board office that declared his or her intent to fit and dispense hearing instruments as required by §741.87 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments).

(24) Sale or purchase - Includes the sale, lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

(25) Speech-language pathologist - An individual who meets the requirements of Subchapter E of this chapter (relating to Requirements for Licensure and Registration of Speech-Language Pathologists) and holds a valid license to practice speech-language pathology.

(26) Student in audiology - An individual pursuing a course of study leading to a degree with an emphasis in audiology and who works within the educational institution or one of its cooperating programs under the direct, on-site supervision and direction of an audiologist licensed under the Act.

(27) Student in speech-language pathology - An individual pursuing a course of study leading to a degree with an emphasis in speech-language pathology and who works within the educational institution or one of its cooperating programs under the direct, on-site supervision and direction of a speech-language pathologist licensed under the Act.

(28) Temporary certificate of registration - A nonrenewable document issued to an individual who meets all requirements for licensure as required by §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) and is in the processing of taking the examination as required by §741.122 of this title (relating to Administration).

(29) Thirty-day trial period - The purchaser of a hearing instrument has possession of an appropriately fitted hearing instrument for a total of 30 consecutive days not to exceed a 60-day time period.

(30) Used hearing instrument - A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instruments for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instruments health professional selected by the dispenser to assist the buyer in making such a determination.

(31) Year - A calendar year.

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

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Teri Mata-Pistokache, Ph.D.

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Subchapter F. Requirements for Licensure and Registration of Audiologists

22 TAC §741.87

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j and Texas Civil Statutes, Article 4512j, and §20 which provides the Board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

The proposed amendment affects Texas Civil Statutes, Article 4512j.

§741.87. *Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.*

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

(g) An audiologist or intern in audiology must comply with the following concerning a 30-day trial period on every hearing instrument purchase.

(1) A purchaser of a hearing instrument [All purchasers] shall be informed of a trial of 30 consecutive days, not to exceed a 60-day time [30-day trial] period, by written agreement. When 60 days have expired, and the purchaser has not had use of the instrument for 30 consecutive days, a new contract must be completed.

(2) All charges and fees associated with such trial period shall be stated in this agreement which shall also include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology. The purchaser shall receive a copy of this agreement.

(3) [(2)] Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the 30-day trial period. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

(h)-(i) (No change.)

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

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Subchapter J. Licensing and Registration Procedures

22 TAC §741.142

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j and Texas Civil Statutes, Article 4512j, and §20 which provides the Board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

The proposed amendment affects Texas Civil Statutes, Article 4512j.

§741.142. *Issuance of License and Registration.*

(a) The board shall send each applicant for a speech-language pathology or audiology license who met the requirements of §741.61 of this title (relating to Requirements for a Speech-Language Pathology License), §741.63 of this title (relating to Special Conditions for Licensure of Speech-Language Pathologists), §741.81 of this title (relating to Requirements for an Audiology License), or §741.83 of this title (relating to Special Conditions for Licensure of Audiologists) whose application has been approved, a form to complete and return to the board office. ~~[with the nonrefundable initial license fee. This fee must be submitted to the executive secretary no later than 90 days following the date of the request or the application and approval will be voided.]~~

(1) The initial license ~~[and the initial license fee]~~ shall be prorated according to the licensee's birth month. Any applicant approved for license within three months of the applicant's birth month shall be issued a license to expire on the last day of the birth month that is one year past the applicant's next birth month. [pay the prorated amount plus one year license fee.] Any applicant approved for less than 12 months, but for more than three months, shall be issued a license to expire upon the last day of the applicant's next birth month. [pay a fee prorated for only those months. The prorated fee and all] All licensee records are based on the month of approval through the last day of the birth month. An applicant may not practice in the professional area in which he or she applied for a license until the application has been approved. [initial license fee has been received by the board.]

(2) Upon approval of the application [receiving an applicant's license form and initial license fee], the board shall issue the applicant:

(A)-(C) (No change.)

(3) (No change.)

(b) The board shall send each applicant for an intern license who met the requirements of §741.62 of this title (relating to

Requirements for an Intern in Speech-language Pathology License) or §741.82 of this title (relating to Requirements for an Intern in Audiology License) whose application has been approved, a form to complete and return to the board office. ~~[with the nonrefundable initial license fee. Upon receipt of the license form and fee, the]~~ The board shall issue a license that will expire one year from the effective ~~[issue]~~ date. The license may be renewed as required by §741.162 of this title (relating to General).

(c) (No change.)

(d) The board shall send each applicant for an assistant license who met the requirements of §741.65 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or §741.85 of this title (relating to Requirements for an Assistant in Audiology License) whose application has been approved, a form to complete and return to the board office. ~~[with the nonrefundable initial license fee.]~~

(1) The initial license ~~[and the initial license fee]~~ shall be prorated according to the licensee's birth month. Any applicant approved for license within three months of the applicant's birth month shall be issued a license to expire on the last day of the birth month that is one year past the applicant's next birth month. ~~[pay the prorated amount plus one year license fee.]~~ Any applicant approved for less than 12 months, but for more than three months, shall be issued a license to expire upon the last day of the applicant's next birth month. ~~[pay a fee prorated for only those months. The prorated fee and all]~~ All licensee records are based on the month of approval through the last day of the birth month.

(2) Upon the applicant meeting the requirements set out in this subsection ~~[and upon receiving an applicant's license form and fee]~~, the board shall issue the applicant a license.

(3) (No change.)

(e)-(f) (No change.)

(g) The board shall send each applicant for a limited license to practice speech-language pathology in the public schools who met the requirements of §741.67 of this title (relating to Requirements for a Limited License to Practice Speech-Language Pathology in the Public Schools) whose application has been approved, a form to complete and return to the board office. ~~[with the nonrefundable initial license fee.]~~

(1) The initial license ~~[and the initial license fee]~~ shall be prorated according to the licensee's birth month. Any applicant approved for license within three months of the applicant's birth month shall be issued a license to expire on the last day of the birth month that is one year past the applicant's next birth month. ~~[pay the prorated amount plus one year license fee.]~~ Any applicant approved for less than 12 months, but for more than three months, shall be issued a license to expire upon the last day of the applicant's next birth month. ~~[pay a fee prorated for only those months. The prorated fee and all]~~ All licensee records are based on the month of approval through the last day of the birth month.

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

(h) The nonrefundable initial license fee is included with the application and initial license fee as referenced in §741.181(1)(A) of this title (relating to Schedule of Fees).

(i) ~~[(h)]~~ Any license, certificate, or registration issued by the board remains the property of the board.

(j) ~~[(i)]~~ An application may be denied if the applicant's license to practice speech-language pathology or audiology in another

state or jurisdiction has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons relating to the applicant's professional competence or conduct which could adversely affect the health and welfare of a client.

(k) ~~[(j)]~~ The board is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the board.

(l) ~~[(k)]~~ Upon written request from the licensee and payment of the duplicate fee, a duplicate license, certificate, or registration may be obtained from the board.

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

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Subchapter K. License and Registration Renewal 22 TAC §§741.162-741.165

The amendments are proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j and Texas Civil Statutes, Article 4512j, and §20 which provides the Board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

The proposed amendments affect Texas Civil Statutes, Article 4512j.

§ 741.162. *General.*

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

(c) Each licensee shall annually pay the nonrefundable fee for license renewal. The executive secretary shall not consider a license to be renewed until the licensee has completed, dated and signed the renewal form ~~[in the presence of a notary public]~~ and submitted this form with ~~[proof of earned continuing education and]~~ the renewal fee to the board office. In addition, an intern must submit the report of completed internship form signed by the intern and the supervisor verifying the professional experience completed and the intern plan and agreement of supervision form for the following year's experience. If the intern is currently not practicing, the intern must submit a signed statement explaining why he or she is not currently practicing. An assistant must provide an updated supervisory responsibility statement signed by both the assistant and the assistant's supervisor. The postmarked date is the date of mailing.

(d) The board shall monitor a licensee's compliance with the continuing education requirements by the use of a random audit. In the event the licensee has been selected for an audit to verify compliance with the continuing education requirements as described in §741.163 of this title (relating to Requirements for Continuing Professional Education), the license shall not be renewed until the

licensee submits acceptable proof of having earned the required continuing education hours. If this documentation is not received or found unacceptable, the licensee must cease practicing upon expiration of the 60-day grace period. The licensee must then renew his or her license in accordance with §741.165 of this title (relating to Late Renewal of a License) if he or she wishes to practice.

(e) [(d)] Renewal of a speech-language pathology, audiology, intern or assistant license is contingent on the applicant meeting uniform continuing education requirements established by the board. Any continuing education hours earned before the effective date of the license are not acceptable.

(f) [(e)] Each licensee is required to provide current addresses and telephone numbers, employment information, and other information on the license renewal form.

(1) A request to change the name as issued on the certificate or license must be submitted in writing with a copy of the divorce decree, marriage certificate, or social security card showing the new name.

(2) The board is not responsible for lost, misdirected, or undelivered renewal forms and fees if sent to the address last reported to the board.

(g) [(f)] The board shall issue a renewed license to each speech-language pathologist, audiologist, intern, or assistant who has met all requirements for renewal.

(h) [(g)] The board shall deny renewals pursuant to the Education Code, §57.491, concerning defaults on guaranteed student loans.

(i) [(h)] A 60-day grace period, after the date of expiration of a license, shall be allowed. A licensee may continue to practice during the grace period and must follow all requirements of the Act and this chapter.

(j) [(i)] If a license is placed on inactive status or is not renewed before the end of the 60-day grace period, the licensee must cease practicing or representing himself or herself as a speech-language pathologist, audiologist, intern or assistant.

(k) [(j)] Prior to expiration of a license, a licensee may request inactive status and, if accepted, shall remain in this status until renewed or deleted in accordance with §741.164 of this title (relating to Inactive Status).

(l) [(k)] After the end of the 60-day grace period, unless inactive status was granted, a licensee may renew his or her license in accordance with §741.165 of this title (relating to Late Renewal of a License).

(m) [(l)] A license not renewed within two years of the date of expiration may not be renewed. However, the individual may reapply for licensure if requirements of Subchapter E of this chapter (relating to Requirements for Licensure and Registration of Speech-Language Pathologists) or Subchapter F of this chapter (relating to Requirements for Licensure and Registration of Audiologists) are met.

(n) [(m)] An individual who within the last three years was licensed in this state and is currently licensed and has been in practice in another state for the two years preceding application may renew the Texas license without reexamination if the individual submits the following:

(1) an original or certified copy of a letter from the licensing board where he or she currently holds a valid license verifying:

- (A) the area in which the license was issued;
- (B) the date of issue;
- (C) the date of expiration; and
- (D) whether derogatory information is on record;

(2) a fee equal to the examination fee; and

(3) proof of having earned at least ten approved continuing education hours during the preceding 12 months.

(o) [(n)] In case of medical hardship, a licensee may:

(1) request that the license be renewed without a penalty being assessed but the issue date shall reflect the actual date of reactivation if the following is submitted:

(A) an original letter signed by the licensee's physician stating the licensee was unable to practice for at least six months during that renewal period because of a physical or mental disability;

(B) any approved continuing education hours earned during the renewal period; and

(C) the renewal form and fee; or

(2) petition the board if the person does not meet paragraph (1)(A) of this subsection but believes he or she has a valid medical reason for the late renewal.

(p) [(o)] A suspended license is subject to expiration and may be renewed as provided in this subchapter; however, the renewal does not entitle the licensee to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended, until such time as the license is fully reinstated.

(q) [(p)] A license revoked on disciplinary grounds may not be renewed. If it is reinstated, the former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect, plus the late renewal penalty fee, if any, accrued since the time of the license revocation.

(r) [(q)] An audiologist or intern in audiology who fits and dispenses hearing instruments must indicate on the license renewal form his or her intention to fit and dispense hearing instruments and submit [an updated notarized registration form with] the registration fee each year when the audiology or intern in audiology license is renewed. If, at the time the audiology or intern in audiology license was renewed, the licensee indicated that he or she did not wish to fit and dispense hearing instruments but later wishes to do so, the licensee must first submit the completed registration form and fee. [If the licensee does not wish to continue to fit and dispense hearing instruments at the time he or she renews the license, the licensee must return the registration form informing the board of that decision. Should the licensee later wish to fit and dispense, he or she must submit the completed notarized registration form and fee.]

§ 741.163. *Requirements for Continuing Professional Education.*

Continuing professional education requirements must be met for renewal of a speech-language pathology, audiology, intern or assistant license.

(1)-(8) (No change.)

(9) The board office will accept a letter or form bearing a valid signature or verification as authorized by the continuing education sponsor as proof of completion of a valid continuing education experience. In the event this verification cannot be obtained, the board will accept verification from the presenter of an

approved event if the presenter can also provide proof that the event was acceptable to an approved sponsor. Unauthorized signatures or verification will not be accepted.

(10) The licensee shall be responsible for maintaining a record of his or her continuing education experiences for a period of at least three years. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the board at the time of renewal unless the licensee has been selected for audit by the board. [Evidence of the acquisition of continuing education credit shall be submitted to the board together with the license renewal form and fee at the time of renewal.]

(11) The licensee shall indicate on the renewal form whether he or she earned the required number of hours of continuing education approved by a sponsor acceptable to the board during the renewal period or if hours were accrued under paragraph (5) of this section and are still available for use.

(12) The audit process shall be as follows:

(A) The board shall select for audit a random sample of licensees for each renewal month. Audit forms shall be sent to the selected licensees at the time the renewal notice is mailed.

(B) All licensees selected for audit must furnish documentation to verify proof of having earned the required continuing education hours. The documentation, including the Record of Continuing Education Hours Earned/Used/Available/Dropped form, must be provided at the time the renewal form is returned to the board.

(C) Failure to timely furnish this information or knowingly provide false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.

§741.164. *Inactive Status.*

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

(f) The inactive license may be reactivated at any time by submitting a written request and proof of having earned ten continuing education hours or 15 for holders of dual speech-language pathology and audiology licenses during the 12-month period preceding the request to reactivate the license unless hours were accrued under §741.163(5) of this title (relating to Requirements for Continuing Professional Education). The random audit for compliance with the continuing education requirements referenced in §741.162(d) of this title (relating to General) does not apply to reactivation of an inactive license. If approved, active status shall begin on the date of approval.

(g)-(i) (No change.)

§741.165. *Late Renewal of a License.*

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

(c) The licensee must submit the following if he or she wishes to renew the license:

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

(3) proof of having earned or accrued continuing education as follows:

(A)-(C) (No change.)

(D) if renewing at the end of the second year of inactive status, at least 30 continuing education hours or 45 hours for holders of dual speech-language pathology and audiology licenses; [and]

(E) the hours earned or accrued before expiration of the license shall count toward meeting these hours as long as the hours

are still available for use when the request for renewal is received; and [-]

(F) the random audit for compliance with the continuing education requirements referenced in §741.162(d) of this title (relating to General) does not apply to late renewal of a license.

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

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

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Subchapter L. Fees and Processing Procedures

22 TAC §741.181

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j and Texas Civil Statutes, Article 4512j, and §20 which provides the Board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

The proposed amendment affects Texas Civil Statutes, Article 4512j.

§ 741.181. *Schedule of Fees.*

The purpose of this section is to establish a schedule of fees to provide the funds to support the activities of the board.

(1) The schedule of fees is as follows:

(A) application and initial license fee - \$70 [§35];

(B) provisional license fee - \$70 [§35];

(C) (No change.)

(D) registration fee to [for audiologist and intern in audiology who] fit and dispense hearing instruments [aids] - \$15 [§10];

~~(E) initial license fee (prorated) - \$35;~~

~~[(F) initial dual license as a speech-language pathologist and audiologist fee (prorated) - \$55;]~~

(E) ~~[(G)] license renewal fee - \$40~~ [§35];

(F) ~~[(H)] dual license as a speech-language pathologist and audiologist renewal fee - \$65~~ [§55];

(G) ~~[(I)] duplicate license, certificate, or registration fee - \$10;~~

(H) ~~[(J)] inactive fee - \$35;~~

(I) license verification fee - \$10;

(J) [~~K~~] late renewal penalty fee - an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee;

(K) [~~L~~] examination fee - the amount charged by the Texas Department of Health's designee administering the examination; and

(L) [~~M~~] reinstatement fee for a license that was suspended for failure to pay child support - \$50.

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

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

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Subchapter M. Denial, Probation, Suspension, or Revocation of Licensure or Registration

22 TAC §741.201

The new section is proposed under Texas Civil Statutes, Article 4512j, §5 which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j and Texas Civil Statutes, Article 4512j, and §20 which provides the Board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Act.

The proposed new section affects Texas Civil Statutes, Article 4512j.

§ 741.201. Schedule of Sanctions.

(a) It is the purpose of this board to safeguard the public health, safety or welfare and to protect the public from unprofessional conduct by speech-language pathologists and audiologists.

(b) When the Board determines that sanctions are appropriate, proposals for imposition of sanctions shall be made in accordance with the Act, §17.

(c) Imposition of sanctions shall be based on the following:

- (1) the seriousness of the violation(s);
- (2) previous compliance history;
- (3) the severity level necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other extenuating circumstances.

(d) Severity levels shall be categorized by one of the following severity levels:

(1) severity level I - violations that are most significant and have a direct negative impact upon the health, safety or welfare of the public;

(2) severity level II - violations that are very significant and have impact upon the health, safety or welfare of the public;

(3) severity level III - violations that are significant and which, if not corrected, could threaten the health, safety or welfare of the public;

(4) severity level IV - violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances; and

(5) severity level V - violations that are minor infractions.

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 38. Chronically Ill and Disabled Children's Services Program

25 TAC §38.18

The Texas Department of Health (department) proposes an amendment to §38.18 concerning the Children with Special Health Care Needs Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) and the department in the area of developing comprehensive systems of health care for children with special health care needs and their families.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules to establish advisory committees. The rules must state the purpose of each committee, state the composition of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

In 1995, the board established a rule relating to the Children with Special Health Care Needs Advisory Committee. The rule states that the committee will automatically be abolished on January 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until January 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to state the committee is established under the Health and Safety Code, §11.016 which allows the board to establish advisory committees; to reference the Government Code; to make it clear that the purpose of the committee is to provide advice to the board; to address changes to the composition of the committee; to require that the presiding officer and the assistant presiding officer of the committee will be selected by the chairman of the board for a term of two years; to allow a temporary vacancy in an office to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; and to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Kathleen Hamilton, Acting Bureau Chief, Bureau of Children's Health, has determined that for each of the first five years the proposed section is in effect, there will be no new fiscal implications for state or local governments as a result of enforcing or administering this section.

Ms. Hamilton 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 better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Georgia Allen, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-3015. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§38.18. *Children with Special Health Care Needs Advisory Committee.*

(a) The committee.

(1) The Children with Special Health Care Needs Advisory Committee (committee) shall be appointed under and governed by this section.

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board [~~Texas Board of Health (board)~~] in the area of developing comprehensive systems of health care for children with special health care needs and their families.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the Chronically Ill and Disabled Children's Services (CIDC) Program and any other programs administered by the Texas Department of Health (department) [department] that provide services to children with special health care needs.

(2) The committee will assist the department and the board to ~~shall~~ promote the development of systems of care for all children with special health care needs consistent with Social Security Act, Title V, by participating in long range planning activities including:

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

(3) (No change.)

(e) Committee abolished. By January 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date. [The committee shall be automatically abolished on January 1, 1999.]

(f) Composition. The committee shall be composed of 18 members.

(1) The composition of the committee shall include six [nine] consumer representatives, three special health care needs representatives, and nine nonconsumer representatives.

(A) (No change.)

(B) Special health care needs representatives include family members of children with special health care needs or adults with disabilities. The family members or adults may also be service providers.

(C) [B] Nonconsumer members include service providers for children with special health care needs who are enrolled as CIDC or Medicaid providers, representatives of professional associations whose members provide services to children with special health care needs and their families, representatives from institutions of higher education with expertise in public health and children with special health care needs, and other service providers who deliver services to children with special health care needs. Nonconsumer members may also be family members of children with special health care needs or adults with disabilities.

(2) (No change.)

(3) If the composition of the committee as it existed on December 31, 1998, is changed under this section, existing members shall continue to serve until the board appoints members under the new composition.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of six members will expire on December 31st of each even-numbered year [~~beginning in 1996~~].

(2) (No change.)

(h) Officers. The chairman of the board [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on January 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

(1) Each officer shall serve until December 31st of each even-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board [~~until the next regular election of officers~~].

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

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled temporarily by vote of the committee until appointment by the chairman of the board occurs [~~at the next committee meeting~~].

(5)-(6) (No change.)

(7) The presiding officer and assistant presiding officer serving on January 1, 1999, will continue to serve until the chairman of the board appoints their successors, which will be not earlier than September 1, 1999.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4)-(7) (No change.)

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

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

~~[(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.]~~

(k) (No change.)

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

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

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender [~~sex~~], religion, national origin, age, physical condition, or economic status.

(5) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the

committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year; ~~and any amendments to this section requested by the committee.~~

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

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or the budget execution process.

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

~~[(q) Effective date: This section shall become effective on January 1, 1995.]~~

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 September 11, 1998.

TRD-9814450

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: October 25, 1998

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



Chapter 49. Oral Health Improvement Services Program

25 TAC §49.16

The Texas Department of Health (department) proposes an amendment to §49.16 concerning the Oral Health Services Advisory Committee. The committee provides advice to the Texas Board of Health (board) on matters relating to the operation of the state dental program and the Texas Health Steps (EPSDT) dental program, and to assist those programs and others in the department that require professional dental expertise.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules to establish advisory committees that state the purpose of each committee, describe the composition of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically be abolished unless the governing body of the agency affirmatively votes to continue to the committee in existence.

In 1995, the board established rules relating to the Oral Health Services Advisory Committee. The rules stated that the committee would be automatically abolished on January 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until January 1, 2003.

The section amends provisions relating to the operation of the committee. Specifically language is revised to state that the committee is established under the Health and Safety Code, §11.016 which allows the board to establish advisory committees; to reference the Government Code; to require the presiding officer and the assistant presiding officer of the committee to be selected by the chairman of the board for a period of two years; to allow a temporary vacancy in an office be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except for certain approval. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Kathleen Hamilton, Acting Bureau Chief, Bureau of Children's Health, has determined that for the first five years the proposed section is in effect, there will be no new fiscal implications for state or local governments as result of enforcing or administering this section.

Ms. Hamilton 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 better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Jerry Felkner, D.D.S., M.P.H., Director, Oral Health Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/458-7323. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

This amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§49.16. *Oral Health Services Advisory Committee.*

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Texas Board of Health (board) to establish advisory committees. [~~The Health and Safety~~

~~Code §43.015, allows the Texas Board of Health (board) to establish the committee.]~~

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [Texas Civil Statutes, Article 6252-33], concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board on matters relating to operation of the state dental program and the Texas Health Steps [EPSDT] dental program, and to assist those programs and others in the department that require professional dental expertise.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to operation of the state dental program and the Texas Health Steps [EPSDT] dental program.

(2) The committee shall perform the following duties:

(A) (No change.)

(B) act as a liaison between the dental profession of Texas and the state and Texas Health Steps [EPSDT] dental programs;

(C) increase participation in the state and Texas Health Steps [EPSDT] dental programs among Texas dentists;

(D) advise/recommend items for improving the operation of the state and Texas Health Steps [EPSDT] dental programs;

(E)-(F) (No change.)

(3) (No change.)

(e) Review and duration. By January 1, 2003 [1999], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) (No change.)

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of consumer and nonconsumer members will expire on December 31 of each even-numbered year[; ~~beginning in 1996~~].

(2) (No change.)

(h) Officers. The chairman of the board [committee] shall appoint [elect] a presiding officer and an assistant presiding officer to begin serving on January 1 of each odd-numbered year [at its first meeting after August 31 of each year].

(1) Each officer shall serve until December 31st of each even-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board [until the next regular election of officers].

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

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled temporarily by vote of the committee until appointment by the chairman of the board occurs [at the next committee meeting].

(5)-(6) (No change.)

(7) The presiding officer and assistant presiding officer serving on January 1, 1999, will continue to serve until the chairman of the board appoints their successors, which will be not earlier than September 1, 1999.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [Each] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4)-(7) (No change.)

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

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

~~{(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.}~~

(k)-(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall include:

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

(E) the status of any rules which were recommended by the committee to the board; and

(F) anticipated activities of the committee for the next year; ~~and~~

~~{(G) any amendments to this section requested by the committee.}~~

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

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or the budget execution process.

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

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

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

TRD-9814454

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: October 25, 1998

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



Chapter 56. Family Planning

Subchapter A. Program Information

25 TAC §56.104

The Texas Department of Health (department) proposes an amendment to §56.104 concerning the Family Planning Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) and the department in the area of comprehensive family planning services. The committee process affords the opportunity for participation in the development, implementation, and evaluation of the program by persons broadly representative of all significant elements of the population to be served, and by persons in the community knowledgeable about the needs for family planning services.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules to establish advisory committees. The rules must state the purpose of each committee, state the composition of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

In 1995, the board established a rule relating to the Family Planning Advisory Council. The rule states that the committee will automatically be abolished on January 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue into existence until January 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, the name of the committee is revised and language is revised to state that the committee is established under the Health and Safety Code, §11.016 which allows the board to establish advisory committees; to reference the Government Code; to make it clear that the purpose of the committee is to provide advice to the board; to address changes to the composition of the committee by adding an additional consumer member; to require that the presiding officer and the assistant presiding officer of the committee will be selected by the chairman of the board for a term of two years; to allow a temporary vacancy in an office to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to establish the federally required advisory committee on educational and informational material as a subcommittee of the Family Planning Advisory Committee; and to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department,

or the committee except with certain approval. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Mike Montgomery, Chief, Bureau of Clinical and Nutrition Services, has determined that for each year of the first five years the proposed section is in effect, there will be fiscal implications as a result of enforcing or administering this section. Since the committee membership will increase by one person, additional travel reimbursement may occur if the person chooses to receive reimbursement. This committee is authorized to receive reimbursement for travel expenses under the General Appropriations Act. The additional cost will be an estimated maximum of \$1400 per year for state government. There will be no fiscal implications for local governments.

Mr. Montgomery 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 better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will no effect on small businesses. There are no economic cost to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Shannon N. Walton, MSSW, Bureau of Clinical and Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/458-7444 ext. 2051. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§56.104. *Family Planning Advisory Committee* [Council].

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be Family Planning Advisory Committee [Council].

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Board of Health (board) to establish advisory committees.

(3) [2] The committee shall comply with the requirements [meet the intent] of 42 United States Code §300a-4 [300, et seq.], 42 Code of Federal Regulations §59.6, and the Title X Program Guidelines for Project Grants for Family Planning Services by appointment of a subcommittee to review and approve informational and educational materials developed or made available under Title X of the Public Health Service Act.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [Texas Civil Statutes, Article 6252-33], concerning state agency advisory committees.

(c) (No change.)

(d) Tasks.

(1) (No change.)

(2) The committee shall advise the board concerning rules relating to the family planning program under Titles V, [X], XIX, and XX of the Social Security Act and Title X of the Public Health Service Act.

(3) (No change.)

(e) Committee abolished. By January 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date. [The committee shall be automatically abolished on January 1, 1999.]

(f) Composition. The committee shall be composed of 15 [14] members.

(1) The composition of the committee shall include five [four] family planning consumer representatives and ten professional representatives. The composition of the committee shall reflect the diversity of the state's citizens and consumers, with regard to ethnicity, race, age, gender, residence, and economic status. Each member shall represent this diversity on behalf of all the citizens of the state in all the committee's deliberations and decisions, not simply represent a narrowly defined constituency.

(2) The members of the committee shall be appointed by the board as follows:

(A) five [four] family planning consumers, with at least one male representative; and

(B) (No change.)

(3) If the composition of the committee as it existed on December 31, 1998, is changed under this section, existing members shall continue to serve until the board appoints members under the new composition.

(g) Terms of office. The term of office of each member shall be six years, except for the Regional Coordinating Committee Chairperson, who shall be appointed for a two-year term.

(1) Members shall be appointed for staggered terms so that the terms of members shall expire on December 31 of each even-numbered year; ~~beginning in 1996. In 1996, five members' terms shall expire and five new members shall be appointed. In 1998, five members' terms shall expire and five new members shall be appointed. In 2000, four members' terms shall expire and four new members shall be appointed.~~

(2) (No change.)

(h) Officers. The chairman of the board [committee] shall appoint [elect] a presiding officer and an assistant presiding officer to begin serving on January 1 of each odd-numbered year [at its first meeting of each calendar year].

(1) Each officer shall serve until December 31st of each even-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board [until the next regular election of officers].

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

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled temporarily by vote

of the committee until appointment by the chairman of the board occurs [at the next committee meeting].

(5)-(6) (No change.)

(7) The presiding officer and assistant presiding officer serving on January 1, 1999, will continue to serve until the chairman of the board appoints their successors, which will be not earlier than September 1, 1999.

(i) Meetings. The committee shall meet at least semiannually to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [Each] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4)-(7) (No change.)

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

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

~~[(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings].~~

(k)-(l) (No change.)

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

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

(5) The committee shall appoint a subcommittee to review and approve Title X informational and educational material as required by federal law.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year; ~~and any amendments to this section requested by the committee].~~

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

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [Texas

Civil Statutes, Article 6252-33], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

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

~~[(q) Effective date. This section shall become effective on January 1, 1995.]~~

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 September 11, 1998.

TRD-9814456

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: October 25, 1998

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



Chapter 157. Emergency Medical Care

Subchapter C. Emergency Medical Services

Training and Course Approval

25 TAC §157.40

The Texas Department of Health (department) proposes new §157.40, concerning the emergency medical services (EMS) licensure of paramedics. This new section is a result of House Bill 1407, 75th Legislative Session, 1997, which required the department to establish a program to allow persons to become licensed paramedics. This new level of EMS personnel will encourage paramedics to improve their education level by the requirement of college level course work and enhance their assessment skills and judgement.

The new section is needed to clarify the phase-in process of the licensing requirements for the licensed paramedic designation.

Gene Weatherall, Bureau of Emergency Management, has determined that for each year of the first five years the section is in effect, there will be fiscal implication to state government as a result of administering the section as proposed. The effect on state government will be an estimated increase in revenue to the state of approximately \$7,238 per year as a result of proposed fee increase. It is estimated that cost to the state to administer the new provision will be a one-time cost of \$28,000 for increased computer programming. There will be no impact on local government.

Mr. Weatherall has determined that for each year of the first five years the public benefit from enforcing the section will be the advanced educational standards for the licensed paramedic. The cost to individuals will be \$100 for a four-year license. There will be no impact on local employment or on small business.

Comments on the proposed rule may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512)834-6700. Comments will be accepted for 30 days following publication of this rule in the *Texas Register*. A public hearing will be held Friday,

October 9, 1998, 9:00 am - noon, in room K-100 at the Texas Department of Health, 1100 West 49th Street, Austin, Texas.

The new section is proposed under Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to propose rules for the performance of every duty imposed by law on the board, the department, and the Commissioner of Health.

The new section affects Health and Safety Code, Chapter 773, §§773.003, 773.0495, 773.055 and 773.064, and Health and Safety Code §12.001.

§157.40. Paramedic Licensure.

(a) Application Requirements for paramedic licensure.

(1) From the effective date of this section through August 31, 2002, a currently certified paramedic may apply for a paramedic license if the candidate has met at least one of the following requirements:

(A) at least 60 hours of college credit which includes the Academic Core Curricula as defined by the Texas Higher Education Coordinating Board;

(B) an associate degree;

(C) a baccalaureate degree; or

(D) a post graduate degree;

(2) This section shall not be interpreted as limiting the authority of a regionally accredited college or university to grant academic credit for non-traditional educational experiences to persons who are able to demonstrate competence through examination or other methods consistent with institutional policy and procedure.

(3) Beginning September 1, 2002, a currently certified paramedic may apply for a paramedic license if the candidate has at least one of the following requirements:

(A) an associate degree in emergency medical services (EMS);

(B) a baccalaureate degree; or

(C) a post graduate degree.

(b) Process for those applying for a paramedic license. A candidate for licensure under this section shall:

(1) be at least 18 years of age;

(2) submit an application and a nonrefundable fee, if applicable, of \$100;

(3) submit proof of having completed an Advanced Cardiac Life Support Course within the previous two years;

(4) have completed a Texas Department of Health (department) approved paramedic course. If the candidate is not currently certified as a paramedic, the candidate shall submit a paramedic course completion certificate;

(5) have met the appropriate requirements in subsection (a) of this section;

(6) submit a certified copy of a transcript from an accredited college or university;

(7) achieve a passing grade on the department's written examination or in lieu of the state exam, pass the National Registry ex-

amination, if the candidate is not currently certified as a paramedic; and

(8) complete the department's examination within six months of the course completion date;

(A) one retest may be taken within six months of the course completion date if the candidate fails to pass the written exam; and

(B) a fee of \$25 shall accompany the request for a retest.

(c) Examination scheduling. The department has final authority for scheduling all examination sessions.

(1) Examinations shall be administered at regularly scheduled times in regional test centers.

(2) The candidate shall make appropriate arrangements for the examination.

(3) The department is not required to set special examination schedules for a single candidate or for a specific group of candidates.

(d) Verification of information. After verification by the department of the information submitted by the candidate, a candidate who meets the requirements shall be licensed for a period of four years from the effective date.

(1) The license is not transferable. A wallet-size copy of the license shall be issued and carried by the licensee while on EMS duty.

(2) Duplicate copies of the license and wallet-size copy may be issued to replace lost credentials for a fee of \$5.00.

(e) A licensed paramedic may not hold a department EMS certificate except for that of EMS coordinator, EMS examiner or EMS instructor.

(f) Continuing education (CE) hours. During the four-year licensure period, each licensee shall complete at least the following minimum number of contact hours of approved CE to be eligible for renewal of a license. Licensees shall accrue at least one-half of the required number of hours in the first two years of the licensure period.

(1) Licensed paramedics are required to complete 96 hours to be eligible for renewal of their license.

(2) Employers and/or medical directors may require licensees under their supervision to complete additional requirements.

(g) CE subject areas. CE hours shall be accrued within one or more of the following medical subject areas:

(1) patient assessment and management;

(2) cardiac disorders;

(3) pulmonary disorders;

(4) endocrine disorders;

(5) neurological disorders;

(6) other medical disorders;

(7) behavioral disorders;

(8) obstetrics/gynecology;

(9) pediatrics;

(10) geriatrics;

(11) trauma; or

(12) protocols.

(h) Renewal.

(1) Prior to the expiration of a license, the department shall mail a notice of expiration by United States mail or electronic mail to the licensee at the address shown in current records of the Bureau of Emergency Management (bureau). It is the responsibility of the licensed paramedic to notify the bureau of any change of address including an electronic address if one was listed on the original application.

(2) If a licensed paramedic has not received notice of expiration from the department 45 days prior to the expiration of the license, it is the duty of the license holder to notify the department and request an application for renewal of the license. Failure to apply for renewal of the license shall result in expiration of the license.

(3) An application for renewal of a license shall be submitted and all requirements for renewal of the license shall be completed no later than the expiration date of the most recent license.

(4) A licensed paramedic shall meet the following requirements for renewal of the license:

(A) complete within the previous four years the number of approved CE hours for the licensed paramedic as required in subsection (f) of this section within one or more of the medical subject areas listed in subsection (g) of this section and submit a CE summary form listing the completed hours;

(B) submit an application for renewal of the license to the department along with the appropriate nonrefundable fee as required in subsection (b)(2) of this section;

(C) achieve a passing grade on the department's written examination or in lieu of the state exam, pass the National Registry examination;

(D) complete the examination no later than three months after the current license expiration date;

(i) one retest may be taken no later than three months after the current license expiration date if the candidate fails the written exam;

(ii) a fee of \$25 shall accompany the request for a retest; and

(iii) the National Registry examination may be taken in lieu of the department's retest.

(E) completion of the process in this paragraph establishes eligibility for licensure renewal only. Other requirements may be levied by an employer and/or medical director as a condition of employment/volunteering.

(5) After verification by the department of the information submitted, the license will be renewed or inactive status will be initiated, whichever is appropriate, for four years beginning on the day following the expiration date of the license. A new wallet-size card signed by department officials shall be issued.

(i) Late renewal of a license. An application for renewal of a license shall be considered late if the application and nonrefundable fee, if appropriate, are received after, but no later than three months after, the license has expired, and/or all requirements for licensure shall continue during the three months following the expiration date.

(1) Late applications shall be accompanied by a late fee of \$25 in addition to the regular fee.

(2) Persons who do not complete the relicensure process by three months following their expiration date are not licensed.

(j) Inactive status. A licensed paramedic may make application to the department for inactive status at any time during or within three years after the license expiration date, if the license can be verified by the department and/or training institution records.

(1) If the request is made to change a current license to an inactive status, there is no fee.

(2) The initial inactive status period shall remain in effect until the end of the current license period for those candidates who are currently licensed and shall be renewable every four years thereafter. The candidate shall submit an application and the full fee as stated in subsection (b)(2) of this section.

(3) The initial inactive status period shall remain in effect for four years from the date of issuance for those candidates not currently licensed.

(4) While on inactive status a person shall not provide patient care as that of certified or licensed personnel and may only act as a bystander. Failure to comply shall be cause for revocation of the inactive status license and may cause denial of future applications for licensure.

(k) Reentry. Reentry is the process for regaining EMS licensure after a period of inactive status, or when an application for renewal is postmarked and/or the requirements for relicensure are met more than three months after the expiration of the license.

(1) To reenter from inactive status the candidate shall:

(A) complete a department-approved formal paramedic refresher course;

(B) submit an application and nonrefundable fee as required in subsection (b)(2) of this section, in addition to a late fee as in subsection (i)(1) of this section;

(C) pass the department's written examination, or in lieu of the state exam, pass the National Registry examination; and

(D) all reentry requirements shall be completed no later than six months after the application date.

(2) To reenter after a license has expired, the candidate shall:

(A) apply within the department's record retention requirements for the prior license, which is no later than three years past the license expiration;

(B) have completed, within the previous four years, the number of approved CE hours for the licensed paramedic as required in subsection (f) of this section within one or more of the subject areas listed in subsection (g) of this section and submit a CE summary form listing the completed hours;

(C) submit an application for relicensure and the nonrefundable fee as required in subsection (b)(2) of this section; in addition to the late fee as in subsection (i)(1) of this section; and

(D) pass the department's written examination, or in lieu of the state exam, pass the National Registry examination, no later than six months after the application date.

(l) Reciprocity. A person currently certified by the National Registry and/or certified or licensed as a paramedic in another state

and who meets all the requirements of this section may apply for licensure by submitting an application and a fee of \$100.

(1) After the department evaluates the application, verifies the licensure and assures that the requirements in subsection (b) of this section have been met, the candidate will be licensed in Texas for four years from the issuance date of the current Texas licensure.

(2) Prior to the expiration of the Texas license the candidate shall:

(A) complete the CE hours required by subsection (f) of this section;

(B) submit a completed paramedic license application, a nonrefundable fee as in subsection (b)(2) of this section; and a CE summary form listing the required number of CE hours;

(C) pass the department's written examination;

(i) one retest may be taken no later than three months following the current licensure date if the candidate does not pass the written exam;

(ii) a fee of \$25 shall accompany the request for a retest; and

(iii) the National Registry examination may be taken in lieu of the department's retest.

(3) A candidate who does not complete the requirements for licensure within three months after the expiration date of the license shall meet the requirements of subsection (i) of this section as applicable to achieve licensure.

(m) Equivalency. A candidate from outside the United States applying for a paramedic license shall:

(1) submit a personnel application and a nonrefundable fee of \$150;

(2) submit a copy of the curriculum for the course completed;

(3) submit evidence of successful course completion and licensure;

(4) complete any deficiencies identified during the curriculum review or completion of a department-approved paramedic refresher course;

(5) submit evidence that the requirements of this section have been met;

(6) achieve a passing grade on the department's written examination or pass the National Registry examination; and

(7) complete the examination within six months of the application date;

(A) one retest may be taken within six months of the application date;

(B) a fee of \$25 shall accompany the request for a retest; and

(C) the National Registry examination may be taken in lieu of the department's retest.

(n) Military personnel. A certificant who fails to renew a license within three months of the expiration date because of active duty in the United States military outside the State of Texas shall have one year from the date of his discharge or the date of his return to Texas (whichever is first) to complete all requirements for relicensure.

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 September 11, 1998.

TRD-9814455

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: October 25, 1998

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



Chapter 181. Vital Statistics

The Texas Department of Health (department) proposes new §§181.31 - 181.32 and 181.41 - 181.49 regarding adoption information, records received from child-placing agencies no longer in business, and the operation of the Bureau of Vital Statistics (BVS) central adoption registry. These sections implement the Texas Family Code, Chapters 108 and 162. Effective January 1, 1998, the central adoption registry was transferred from the Texas Department of Protective and Regulatory Services to the department as directed by House Bill (HB) 1091 of the 75th Legislature. The registry offers a mutual-consent voluntary registration that enables adoptees, birth parents, and biological siblings to locate each other without having to go through the court system or spending excessive amounts of time and effort through other sources.

New §181.31 restates the court's requirement to send adoption information to the Bureau of Vital Statistics cross-referencing biological family information with adoptive family information. New §181.32 clarifies the notification process under the Human Resources Code, §42.045, so that a child-placing agency relinquishing its license is to notify the department where its adoption records shall be kept for safe-keeping. If the child-placing agency chooses to turn its adoption records over to the Bureau of Vital Statistics, the section addresses how the records shall be shipped to the Bureau of Vital Statistics and who has access to the non-identifying part of the record. New §181.32 also allows for updated medical and social information to be added to the closed child-placing agency's adoption record. New §§181.41 - 181.49 reflect the department's newly acquired central adoption registry program.

Richard B. Bays, Chief, Bureau of Vital Statistics, has determined that for the first five-year period the sections are in effect, there will be no additional fiscal implications as a result of administering the rules as proposed. The Bureau of Vital Statistics currently receives approximately \$100,000 per year by collecting a \$15 filing fee when an adoption petition is filed; a \$20 filing fee when an adoptee, birth parent or biological sibling registers with the central adoption registry; and other assorted fees received from adoptees and adoptive parents requesting copies of redacted adoption records housed at the Bureau of Vital Statistics. The cost associated with the processing and maintenance of defunct child-placing agency adoption records, including the need to microfilm the records as needed for permanent storage and the cost of administering the registry is mostly offset by the revenues mentioned above. There will be no fiscal implication for local government.

Mr. Bays has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated by the updating of the requirements concerning adoption records and adoption registries will be an increased number of reunions between adoptees, birth parents, and siblings. This is partially due to the ability to conduct research into the department's vital records databases without unsealing the file and the ability to increase search parameters established by the registry's new database. There will be a small impact on child-placing agencies that operate their own registry stemming from the need to supply the central adoption registry with duplicate information of their registrant material, as required by law; however, the centralization of registrants into one database will ensure that there is minimal oversight caused by the decentralization of the original registry process. The anticipated economic cost to persons applying to the central adoption registry will be the \$20 fee and the cost to persons filing adoption petitions will be the \$15 fee. There will be no impact on local employment.

Comments on the proposal may be submitted to Patricia Molina, Program Administrator, Central Adoption Registry, Bureau of Vital Statistics, Texas Department of Health, P.O. Box 140123, Austin, Texas 78714-0123, (512) 458-7388, or via e-mail address at: Patricia.Molina@tdh.state.tx.us. Comments will be accepted for 60 days following publication of this proposal in the *Texas Register*.

Subchapter B. Vital Records

25 TAC §181.31, §181.32

The new sections are proposed under the Texas Family Code, §162.420, which provides the Texas Board of Health (board) with authority to make rules and adopt minimum standards for adoption registries; Health and Safety Code §191.003, which provides the board with the authority to adopt necessary rules for collecting, recording, transcribing, compiling and preserving vital statistics; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These new sections affect Human Resources Code, §42.045, and Texas Family Code, §108.003, §162.006, and §§162.401 - 162.422.

§181.31. Minimum Requirements for Adoption Reporting.

(a) In complying with the Texas Family Code, §108.003, the court that renders a decree of adoption shall send to the Texas Department of Health, Bureau of Vital Statistics a certified report of adoption on a form provided by the department. The clerk shall send the form not later than the 10th day of the first month after the month in which the court renders the adoption decree. The report shall include, but not be limited to, the following:

- (1) the name of the adopted child after adoption;
- (2) the birth date of the adopted child;
- (3) the docket number of the adoption suit;
- (4) the identity of the court rendering the adoption;
- (5) the date of the adoption order;
- (6) the name and address of each parent, guardian, managing conservator or other person whose consent to adoption was required or waived under the Texas Family Code, Chapter 159, or whose parental rights were terminated in the adoption suit;

(7) the identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption; and

(8) the identity, address, and telephone number of the voluntary adoption registry through which the adopted child may register as an adult adoptee in addition to registering with the central registry.

(b) When the clerk of the court collects the \$15 fee required by the Texas Family Code, §108.006(b), the clerk shall send the fee by check or money order to the Texas Department of Health - Bureau of Vital Statistics, P.O. Box 12040, Austin, Texas 78711-2040.

§181.32. Out-of-Business Child-Placing Agencies Records.

(a) At or prior to the time a child-placing agency ceases to function as a child-placing agency, it shall notify the Texas Department of Health - Bureau of Vital Statistics, where its adoption records shall be kept for permanent safe-keeping. The bureau receives notice on behalf of the Texas Department of Protective and Regulatory Services (PRS) so that the notice to the bureau meets the requirements of the Human Resources Code, §42.045.

(b) The bureau maintains many records of closed adoption agencies on behalf of PRS and is one entity a child-placing agency may designate to preserve its adoption records. An agency may also designate another child-placing agency to preserve its records.

(c) If a child-placing agency designates the bureau to house its records, the agency shall assume the responsibility of shipping the records to a designation specified by the bureau. The agency must ensure that the records are free from insects and rodents, and mildew-free and dry. The records shall be shipped in sturdy cardboard boxes (no larger than 12 inches x 15 inches) via an insured carrier. Each birth mother's file and the adoptive parents' file shall be together. The agency must provide two index cards for each adoption file, one that cross-references the birth mother's name with the adoptive parents' name and one cross-referencing the adoptive parents' names with the birth mother's name. Each card must include the date of birth of each child and the child's adoptive name. The information may also be on a word processing or spreadsheet document(s) compatible with the bureau's word processing software.

(d) If the child-placing agency designates the bureau to maintain and preserve its records, a redacted or de-identified copy of the birth and/or adoption record shall be prepared by the bureau for a qualified requestor under the Texas Family Code, §162.006, Right to Examine Records. Charges for copies shall be those allowed by the Open Records Act, Government Code, Chapter 552.

(e) If a birth parent, birth sibling or birth grandparent provides post-adoption medical or social information to the bureau and the bureau houses the records of the closed child-placing agency, the bureau shall place the information with the original file.

(1) Upon the request of a qualified requestor under Texas Family Code, §162.006, the information will be prepared and redacted for release to that person.

(2) The bureau shall locate the last known address of the adoptive parents or the adult adoptee and attempt to inform them of their right to examine the redacted or de-identified portion of the records.

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 September 11, 1998.

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Subchapter C. Central Adoption Registry

25 TAC §§181.41-181.49

The new sections are proposed under the Texas Family Code, §162.420, which provides the Texas Board of Health (board) with authority to make rules and adopt minimum standards for adoption registries; Health and Safety Code §191.003, which provides the board with the authority to adopt necessary rules for collecting, recording, transcribing, compiling and preserving vital statistics; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These new sections affect Human Resources Code, §42.045, and Texas Family Code, §108.003, §162.006, and §§162.401 - 162.422.

§181.41. Mutual Consent Voluntary Adoption Registries.

(a) An agency, licensed by the Texas Department of Protective and Regulatory Services (PRS) which applies the minimum standards and guidelines for child-placing agencies to place children for adoption, or an association of those agencies, that was in existence on or before January 1, 1984, may establish or operate a voluntary adoption registry, but only in compliance with the Texas Family Code, §§162.401 - 162.422.

(b) The Bureau of Vital Statistics of the Texas Department of Health (department) shall operate a Central Adoption Registry in compliance with the Texas Family Code, §§162.401 - 162.422.

(c) An adoptee, a birth parent or a biological sibling may register with the registry of the agency through which the adoptee was adopted or placed for adoption and with the Central Adoption Registry.

§181.42. Adoption Information by the Courts or Child-Placing Agencies.

(a) At the time an adoption order is rendered, the district court that grants the adoption shall provide to the adoptive parents information provided by the Bureau of Vital Statistics describing the functions of voluntary adoption registries. If the adopted child is 14 years of age or older, the court shall provide the information to the child.

(b) A licensed child-placing agency shall provide to each of the adopted child's known biological parents, similar information when the parent signs an affidavit of relinquishment of parental rights, an affidavit of status of child, or an affidavit of waiver of interest in a child.

(c) The information shall include the right of the child or biological parent to refuse to participate in the registry.

§181.43. Requirement to Send Duplicate Information to the Central Adoption Registry.

(a) An authorized voluntary adoption registry shall send to the Texas Department of Health - Bureau of Vital Statistics' Central Adoption Registry duplicate information of all registrant information

the designated registry maintains in its registry. This includes all registrant file information.

(b) Registrant information obtained by a registry on or after March 1, 1999, shall be forwarded to the Central Adoption Registry by the 15th day of the following month after the registration application becomes active.

(c) To ensure that the Central Adoption Registry is able to catalog or list all registrants, agency registries shall forward a copy of all registration applications received any time prior to March 1, 1999, including proof of age and identity of each registrant, and the names, dates of birth, and places of birth of each person for whom the registrant is searching to the Central Adoption Registry by January 1, 2000. Registries may forward the applications earlier if they wish to do so.

§181.44. Inquiry through the Central Index.

(a) The Texas Department of Health - Bureau of Vital Statistics charges a fee of \$5.00 to adoptees, birth parents or biological siblings who inquire with the central index to determine if a child-placing agency that operates its own registry was involved in a specified adoption. The person may send the inquiry, along with the appropriate fee and proof of age and identity to the Texas Department of Health - Bureau of Vital Statistics, Central Adoption Registry (ZZ055), P.O. Box 140123, Austin, Texas 78714-0123 or may inquire in person at the Bureau of Vital Statistics, 1100 West 49th Street, Austin, Texas.

(b) Proof of age and identity is a copy of the requestor's driver's license or other photo identification and a copy of the birth certificate, if the requestor's name has changed due to marriage. If the name has been legally changed through a court order, a certified copy of the order shall accompany the request.

(c) The department shall provide the child-placing agency's name if that agency operates its own registry to which a person may apply. If the Central Adoption Registry finds inconclusive information to determine which agency handled the adoption, the person is entitled to apply only to the Central Adoption Registry.

§181.45. Registration in the Voluntary Adoption Registry System.

(a) To register with the Texas Department of Health - Bureau of Vital Statistics Central Adoption Registry or any other authorized registry as defined in Texas Family Code, §162.403(b), a person must comply with the following requirements:

(1) complete registration form (BVS - 2271);

(2) provide proof of identity, such as a copy of his or her driver's license or other photo identification and, if the requestor's name has changed due to marriage, a copy of his or her birth certificate or marriage certificate. If his or her name has been legally changed, a certified copy of the order shall accompany the registration form; and

(3) meet the eligibility requirement for registration in the Texas Family Code, §162.406.

(b) If the applicant is a male, he may register, but will not be recognized as a birth parent unless:

(1) the birth mother in her application to the registry names him as the biological father and other information on the adoptee is consistent with the father's claim of paternity;

(2) he was adjudicated as the biological father under Texas Family Code, Chapter 160;

(3) he was presumed to be the biological father under Texas Family Code, Chapter 151; or

(4) he signed a consent to adoption, affidavit of relinquishment, affidavit of waiver of interest in the child, or other written instrument releasing the child for adoption. If he signed a document or other instrument denying or refusing to admit paternity, he shall not be recognized as a birth parent.

(c) A registrant's application will be reviewed for acceptance or rejection and a determination made within 45 days after the date the application is received. If accepted, an application is valid for 99 years unless a shorter period is specified by the applicant or the registration is withdrawn.

§181.46. Notification of a Match and Requirements for Release of Information by Participating Voluntary Adoption Registries.

(a) If the administrator of any authorized voluntary adoption registry matches a registrant with another registrant, each registrant shall be notified by certified mail, return receipt requested and delivery restricted to addressee only, that a match has been made.

(b) The notification must also state that the registrant:

(1) may withdraw his registration before identifying information is released;

(2) must sign a consent to disclosure;

(3) must participate in at least one hour of counseling with a social worker or mental health professional who has expertise in postadoption counseling to prepare the registrant for the reunion. A mental health professional must have at least a bachelor's degree from an accredited college with a major in social work, psychology, sociology, counseling or other related field. The mental health professional is not required to be licensed in the field of mental health, but must have expertise in postadoption counseling;

(4) must prove that the counseling requirement has been completed by requesting written notification from the counselor to be sent to the Central Adoption Registry; and

(5) provide any other information that the registry deems appropriate for the success of the reunion.

§181.47. Release of Information by all Voluntary Adoption Registries.

(a) The administrator of any authorized adoption registry releases identifying information to registrants, who have not withdrawn their registrations and who have consented in writing to disclosure. Disclosure may include the registrant's information.

(b) If the registrant is a birth parent, is deceased at the time the match has been made, and consented to the postdeath disclosure of his or her identity at the time of registration or during anytime the registration was valid, identifying information may be released only if:

(1) each child of the deceased birth parent is an adult; or

(2) the surviving parent, guardian, managing conservator or legal custodian of each child has consented in writing to the release of information.

(c) If a match cannot be made because of the death of an adoptee, a birth parent or biological sibling who has not registered or who registered and did not agree to the postdeath disclosure, the Central Adoption Registry shall notify the affected registrant. If appropriate, the registry may disclose nonidentifying information concerning the circumstances of the person's death and the nature of the death, including whether it was genetically related.

§181.48. Confidentiality of Records Maintained by Each Registry.

Each authorized adoption registry shall ensure that the confidentiality of the records in the registry shall be maintained and may not be disclosed except in the manner authorized by the Texas Family Code, Chapter 162, Subchapter E.

§181.49. Fee Requirements for the Central Adoption Registry.

(a) Each person applying to the Central Adoption Registry shall pay a registration fee of \$20, which includes the \$5.00 fee for determining if an agency that operates its own registry was involved in the adoption.

(b) The registration fee shall be waived if the applicant is disabled under the American Disabilities Act; receiving federal assistance, i.e., food stamps; attending secondary school or an accredited college; or in the armed forces.

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 September 11, 1998.

TRD-9814453

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: October 25, 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 285. On-Site Sewage Facilities

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §285.2 and §285.32 and a new §285.8, concerning definitions, updating of testing criteria and permitting and maintenance requirements for aerobic treatment systems.

These proposed amendments will bring this chapter into conformity with House Bill (HB) 3059, passed by the 75th Legislature (1997), which amended Chapter 366 of the Health and Safety Code related to on-site sewage disposal systems. HB 3059 established that for single family residences in counties with a total population of less than 40,000, the regulatory authority for on-site sewage facilities may not condition the issuance of a permit to require the owner of an aerobic treatment system to have a maintenance contract. The proposed amendment reflects that in such situations the owner, after receiving the appropriate training, may either maintain the facility personally or enter into a maintenance contract. Also, HB 3059 modified the definition for on-site sewage disposal systems to allow for the use of cluster type system and expanded the definition of local governmental entity to allow public health districts to become authorized agents under this program. Finally, these amendments reflect the latest version of the National Sanitation Foundation International (NSF) criteria for the testing of proprietary treatment systems.

EXPLANATION OF PROPOSED RULE

Proposed changes to §285.2, relating to Definitions, amend the definition for on-site sewage disposal system and local government entity to conform with the definition of HB 3059. In addition, each definition has been numbered to comply with Texas Register format changes.

Proposed new §285.8, relating to Maintenance Contracts, adds a section to the rules which addresses the limitation on when a permitting authority can require a maintenance contract for aerobic treatment systems.

Proposed change to §285.32(b)(4), related to Criteria for Sewage Treatment Systems, amends the existing rule to reflect the most current publication dates for the appropriate NSF International standards.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect there will be fiscal implications as a result of the administration and enforcement of the sections. There are no costs anticipated for state government. These rules will provide regulatory relief for certain private property owners, expand the opportunity for local regulation of on-site sewage facilities and update references to national testing standards for proprietary on-site wastewater treatment systems. By expanding the definition of local government, the rules will allow public health districts to operate as authorized agents of the commission and provide local control and management of on-site facility permitting and enforcement. The costs to any one local jurisdiction electing to operate as an authorized agent will vary on a case-by-case basis. A local government may assess fees to offset the costs of this program and for the purpose of this analysis it is assumed that fees are established at levels sufficient to support the program with no net costs to the local authority. Pursuant to the Texas Government Code, §2006.02, the agency has determined that this rule will have no adverse economic effect on small businesses because there will be no cost of compliance associated with implementation of this rule. Though there will no longer be a mandatory requirement to have a maintenance contract as a condition of permitting in certain counties practical incentives associated with the operation of an aerobic system still provide business opportunities.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five-year period these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be reductions in costs to private owners of aerobic on-site treatment systems, enhanced local control of on-site facility regulation and improved consistency of state regulations and national testing standards. There are no direct costs to any person, including any small business, as a result of compliance with these rules. These rules will result in cost reductions to some owners of aerobic treatment systems in counties of population less than 40,000 who elect to maintain those systems without a service contract with a third party provider. Some businesses may be affected indirectly to the extent that private system owners elect not to execute or renew existing maintenance contracts with firms providing these services. The actual impact to any one service provider will depend on the number of customers affected and cannot be determined in total. For individual customers, the effect is anticipated to be between \$100 -\$200 annually, although in individual circumstances contract costs could be higher. Most of

these service providers are assumed to be small businesses, however the impact to a small business will be based on the number of maintenance contracts that are not executed or renewed and will be essentially equal for both small and larger businesses.

DRAFT REGULATORY IMPACT ANALYSIS

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

The goal of this proposal is to implement the provisions of HB-3059 which clarifies two statutory definitions and provide an OSSF permittee with the option of performing required maintenance of aerobic treatment systems through either the efforts of the owner or a maintenance company in counties with a population of less than 40,000. This proposal does not create or impose any additional burdens on the regulated community.

This proposal 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. On the contrary, this proposal is expected to have a positive effect on the economy and the environment. This proposal will not exceed any state or federal requirement or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government.

TAKINGS IMPACT ASSESSMENT

The "Texas Government Action Affecting Private Property Act" as found in Chapter 2007 of the Texas Government Code, applies to governmental actions which affect private property. This statute provides that the regulation of on-site sewage disposal systems is specifically exempted from the application of that chapter for political subdivisions. The specific exemption is found at Chapter 2007.003(b)(11)(B). The actions proposed are for the purpose of bringing the rules into conformity with HB 3059 of the 75th Legislative Session. Furthermore, the proposed changes would not affect private property because the rules as promulgated are intended to prevent the occurrence of a nuisance condition. The changes include amendments to definitions, a reduction in the permitting requirements for specific systems in certain counties and incorporating the most current NSF International standards into the rules. These actions in themselves do not constitute a taking of private property.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to Actions and Rules Subject to the CMP, commission rules governing on-site wastewater systems 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 is consistent with the applicable goals 31 TAC §501.12(1)(2)(5) and (10) by protecting and preserving the quality and values of coastal natural resource areas (CNRAs); ensuring sound management of all coastal resources by allowing for compatible economic development and multiple use of the coastal zone; balancing the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring and enhancing CNRAs; and the benefits from minimizing loss of human life and property; and to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs. This action is consistent with 31 TAC §501.14(g)(3) which requires that on-site disposal systems be located, designed, operated, inspected and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. These proposed amendments will maintain or enhance existing agency criteria utilized for management of on-site wastewater systems and will effectively maintain or enhance agency strategies for the protection of coastal natural resource areas.

PUBLIC HEARING

A public hearing on the proposal will be held at 10:00 a.m. on October 22, 1998 in Room 254S, of TNRCC Building E, 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 within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments on the proposal should mention Rule Log Number 97150-285-WT and may be submitted to Lutrecia Oshoko, Office of Policy and Regulatory Development, MC 201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., October 26, 1998. For further information or questions concerning this proposal, please contact Warren Samuelson, Certification and Compliance Division, (512) 239-4799.

Subchapter A. General Provisions

30 TAC §285.2, §285.8

STATUTORY AUTHORITY

This amendment and new section are proposed under the authority of the Texas Health and Safety Code, Chapter 366. This amendment and new section will bring 30 TAC Chapter 285 into conformity with some of the changes to Chapter 366 as made by the 75th Legislature through House Bill 3059.

There are no other codes, statutes or rules that will be affected by this proposal.

§285.2. Definitions.

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

(1) Abandoned tank - A tank that is not to be used or is not allowed to be used by a permitting authority.

(2) Aerobic digestion - The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

(3) Anaerobic digestion - The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) Apprentice - An individual who has been properly registered with the agency, and is undertaking a training program under the supervision of an installer (holding a valid certificate under this chapter) who has agreed to accept responsibility for the individual.

(5) Authorized agent - A local governmental entity authorized by the commission, executive director or Chapter 284 of this title (relating to Private Sewage Facilities) to implement and enforce Chapter 366, Texas Health and Safety Code.

(6) Bedrock - A continuous horizontal layer of hardened mineral deposits that do not support growth of common plant life.

(7) Blackwater - All sewage other than greywater that contains sufficient human or animal wastes to require the water to be treated prior to disposal to the earth's surface or subsurface.

(8) Borehole - A drilled hole four feet or greater in depth and one to three feet in diameter.

(9) Certificate or certification - The actual certificate of registration held by an individual required to obtain such under this chapter or the process of obtaining a certificate of registration from the agency.

(10) Cesspool - A non-watertight, covered receptacle intended for the receipt and partial treatment of domestic sewage. This device is constructed such that its sidewalls and bottom are open-jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(11) Chemical - A substance that in sufficient quantity could have a biotoxic effect on OSSFs.

(12) Cluster system - An on-site sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(13) Composting toilet - A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action facilitated by aeration.

(14) Condensate drain - Collection and disposal of water generated by air conditioners, refrigeration equipment, and other equipment.

(15) Delegation - To delegate or designate.

(16) Designated representative - An individual who holds a valid certificate with the agency and is designated by the authorized agent to make site evaluations, percolation tests, system evaluations, and inspections subject to the authorized agent's approval.

(17) Direct supervision - The responsibility of an installer to perform the oversight, direction and approval of all actions of an apprentice related to the installation of an OSSF.

(18) Edwards Aquifer - That portion of an arcuate belt of porous, water bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays,

Travis, and Williamson Counties or as amended under Chapter 213 of this title (relating to Edwards Aquifer).

(19) Edwards Aquifer Recharge zone - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is specifically that geological area delineated on official maps located in the Austin and San Antonio Regional Offices of the agency, or as amended by Chapter 213 of this title.

(20) Emergency repair - A repair made to an OSSF to abate a serious and dangerous nuisance condition without altering the OSSF's planned function and notification is given to the permitting authority within 72 hours of when the repairs begin.

(21) Evapotranspiration (ET) system - A subsurface sewage disposal facility which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

(22) Floodplain (100-year) - That area along a watercourse during the time the watercourse is subject to the statistical 100-year flood.

(23) Floodway - The channel of a watercourse and adjacent land areas (center portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface more than one foot above the 100-year flood elevation prior to encroachment into the 100-year floodplain.

(24) Geotextile filter fabric - A non-woven fabric suitable for wastewater applications.

(25) Gravel-less drainfield pipe - A generically labeled large diameter (usually eight or ten inches) geotextile fabric-wrapped piping product which is intended for use without gravel in a subsurface disposal facility.

(26) Grease interceptor - Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged. There are no moving mechanical parts and its operational characteristics are similar to a septic tank.

(27) Greywater - Wastewater from clothes washing machines, showers, bathtubs, handwashing lavatories, and sinks not used for the disposal of hazardous or toxic ingredients or waste from food preparations.

(28) Groundwater - Subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(29) Hardness (water) - Primarily the presence in water of calcium bicarbonate, magnesium bicarbonate, calcium sulfate (gypsum), magnesium sulfate (epsom salts), calcium chloride, and magnesium chloride in solution.

(30) Holding tank - A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to, and treatment at, an approved treatment facility. This type of facility is generally intended for interim use, if and when approved by the permitting authority.

(31) Individual - A single living human being.

(32) Installer - An individual who holds a valid certificate with the agency and is compensated by another to perform services, construct, install, alter, or repair an OSSF.

(33) Local governmental entity - A municipality, county, river authority, or special district including an underground water district, ~~and a~~ soil and water conservation district, or public health district.

(34) Maintenance - The normal or routine upkeep, cleaning, or mechanical adjustments to an OSSF.

(35) Maintenance company - A person in the business of maintaining OSSFs. At least one individual in the company must hold an Installer II certificate or a Class D or higher wastewater operator certificate and be certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained.

(36) Maintenance findings - The results of a required performance check or component inspection on a specific OSSF by a valid maintenance company as outlined in the maintenance contract.

(37) Manufactured housing community - Any facility or area developed for lease or rental of space for the placement of two or more mobile homes.

(38) Mound system - A soil absorption disposal system which is installed above the natural grade and in or below an artificially created mound of earth.

(39) Multi-unit residential development - a building, structure or combination of structures which have been designed to contain units in which more than two families may reside.

(40) NSF International - National Sanitation Foundation International testing laboratories located in Ann Arbor, Michigan.

(41) Natural soil - Earthen materials deposited into place by natural processes and not disturbed by artificial processes.

(42) Non-standard disposal - All on-site disposal systems, components and materials not described in this chapter as standard and not marketed for sale in the state as a proprietary item.

(43) Non-standard treatment - All on-site sewage treatment processes not described in this chapter as "standard" or "proprietary" treatment processes.

(44) Nuisance -

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an OSSF, or a blatant discharge from an OSSF.

(45) On-site sewage disposal system - One or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on a [the] site on which any part of ~~[(including cluster systems) where]~~ the system is located.

(46) On-site sewage facility (OSSF) - An on-site sewage disposal system.

(47) On-site waste disposal order - An order adopted by local governmental entity and approved by the executive director.

Approval of this order by the executive director grants authorized agent status to the local governmental entity.

(48) Owner - A person who owns an OSSF.

(49) Permit - An authorization, issued by the permitting authority, to install, construct, alter, extend, repair, or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the license to operate.

(50) Permitting authority - The executive director or an authorized agent.

(51) Planning material - Plans and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit to construct and operate an OSSF.

(52) Platted - Subdivided property recorded with the county/city in an official plat record.

(53) Pretreatment tank - A tank placed ahead of a treatment unit that functions as an interceptor for material such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(54) Probation - A formal procedure in which an individual or authorized agent is subject to an evaluation for a trial period to ascertain whether an individual should retain possession of a registration or certification as issued by the executive director or an authorized agent should retain delegation as an authorized agent.

(55) Proprietary system - An OSSF in which all or part of the treatment or disposal process is owned by a person and has a registered trademark or patent or utilizes a tradename or trademark.

(56) Regional office - A regional office of the Texas Natural Resource Conservation Commission.

(57) Restrictive horizon - A layer of the soil profile with a significant observable change in density, clay content, or particle size which restricts the vertical movement of water.

(58) Revocation - A formal procedure initiated by the executive director in which an authorized agent's delegation or an installer's, site evaluator's, or designated representative's registration or certification is rescinded by the commission.

(59) Scum - A mass of organic and/or inorganic matter which floats on the surface of sewage.

(60) Secondary Treatment - The reduction of pollutants to the levels specified in §309.1 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(61) Seepage pit - An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(62) Septic tank - A watertight covered receptacle constructed to receive, store, and provide treatment to domestic sewage. Its function is to separate solids from the liquid, digest organic matter under anaerobic conditions, store the digested solids through a period of detention, and allow the clarified liquid to be disposed of by an approved method in accordance with this chapter.

(63) Sewage - Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(64) Sewage disposal plan - A technical report prepared by either a registered professional engineer or a registered sanitarian[?] having demonstrated expertise in on-site sewage disposal planning. The plan must include, but is not limited to, the location of structures, easements, wells, treatment units and disposal areas.

(65) Single family dwelling - A habitable structure constructed on, or brought to, its site[?] and occupied by members of one family.

(66) Site evaluator - An individual who holds a valid certificate with the agency and visits a site and conducts a pre-construction site evaluation which includes performing soil analysis, a site survey, and other criteria necessary to determine the suitability of a site for a specific OSSF.

(67) Sludge - A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(68) Soil - The unconsolidated mineral material on the surface of the earth that serves as a natural medium for the growth of plants.

(69) Soil absorption system - A subsurface method for the disposal of partially treated sewage which relies on the soil's ability to absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(70) Subsurface sewage facility - A system which treats sewage and distributes the pretreated sewage effluent into a below ground level disposal area.

(71) Subdivision- a division of a tract of property into two or more parts either by platting or field notes with metes and bounds, and transferred by deed or contract for deed.

(72) Uniform gravel size - Gravel to be used in standard absorption drainfields that has been processed through shaker screens to produce a size passing one size screen and retained on another. The smaller screen shall be at least 50 percent of the size of the larger screen.

(73) Water softening - the removal of minerals causing hardness from water.

§285.8. Maintenance Contract.

(a) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(b) A permitting authority may not condition an on-site permit or the approval of an on-site permit for aerobic treatment systems serving single family residences located in a county with a population of less than 40,000.

(c) The owner of an aerobic treatment system for single-family residence located in a county with a population of less than 40,000 shall either maintain the system directly or through a maintenance contract upon conclusion of any such maintenance provided under a warranty. If the owner elects to maintain the system directly, the owner must, prior to performing any maintenance, obtain training for the system from an installer who has been certified by the manufacturer.

(d) This section does not affect any testing and reporting requirement or schedule as provided by this chapter.

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

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

TRD-9814437

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 26, 1998

For further information, please call: (512) 239-4640



Subchapter D. Planning, Construction and Installation Standards For OSSFs

30 TAC §285.32

STATUTORY AUTHORITY

This amendment is proposed under the authority of the Texas Health and Safety Code, Chapter 366. This amendment will bring 30 TAC Chapter 285 into conformity with some of the changes to Chapter 366 as made by the 75th Legislature through House Bill 3059.

There are no other codes, statutes or rules that will be affected by this proposal.

§285.32. *Criteria for Sewage Treatment Systems.*

- (a) (No change.)
- (b) Treatment processes - proprietary.
 - (1)-(3) (No change.)

- (4) Approval of proprietary aerobic treatment systems.

All agency approved proprietary aerobic treatment systems will be identified and published in a list of approved systems which may be obtained from the executive director. Only treatment systems which have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (1996) [(1990)] or have been tested and certified as a Class I system in accordance with NSF Standard 40 (1996) by an American National Standard Institute (ANSI) or NSF International accredited testing institution shall be considered for approval by the executive director. All agency approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems subject to retesting under the requirements of NSF Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997 [1991]). ~~[In addition, all proprietary aerobic treatment systems undergoing testing by a certification institution recognized by the executive director at the time of the effective date of this rule shall be considered for inclusion on the list of approved systems notwithstanding the fact that the certification institution does not have NSF or ANSI accreditation.]~~ The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF [International] Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997 [1991]).

- (5) (No change.)

- (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.

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

TRD-9814438

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 26, 1998

For further information, please call: (512) 239-4640



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office (GLO) proposes an amendment to §15.11(b) relating to the conditional certification of the City of Galveston's (City's) dune protection and beach access plan (Plan) under the state rules for Management of the Beach/Dune System (beach/dune rules), 31 TAC §§15.1-15.10.

This amendment is proposed to extend the GLO's certification of the City's Plan. The City has not completed the modification of its plan consistent with the GLO's comments of October 14, 1993.

The existing conditional certification of the City's Plan expired July 5, 1998. This amendment allows the City to have an additional 180 days to submit their modified Plan consistent with the GLO comments submitted to the City on October 14, 1993.

The GLO shall provide the City a determination as to the sufficiency of the modifications to the City Plan within 60 days of receipt of the Plan. If the GLO determines that modifications of the Plan are insufficient, the GLO shall provide specific objections to the modifications. If those portions of the Plan to which the GLO has objected can be addressed through further comment, Plan revision and review, conditional certification will be reissued subject to further plan modification.

The proposed certification of the City's Plan is subject to the Texas Coastal Management Program (CMP), 31 TAC§505.11(a)(1)(J), relating to Actions and Rules Subject to the Coastal Management Program, and must be consistent with the applicable CMP goals and policies under 31 TAC §501.14(k), relating to Construction in the Beach/Dune System. The GLO has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies.

Ms. Caryn K. Cosper, deputy commissioner for the Resource Management Program, has determined that there will be no fiscal implications for state or local governments as a result of enforcing or administering this amendment because this amendment extends the certification of the existing local beach/dune program.

Ms. Cospers also has determined that there will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed conditional certification of the City's Plan may be submitted in writing to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, facsimile number 512/463-6311. Comments must be received by 5:00 p.m. on October 12, 1998. Copies of the City's Plan are available from the City and the GLO Archives Division.

The amendment is proposed under Texas Natural Resources Code, §61.011(d) and §61.015(b), which provides the GLO with the authority to preserve and enhance public beach access; Texas Natural Resources Code, §63.121, which provides the GLO with the authority to identify and protect critical dune areas; Texas Natural Resources Code, §33.601, which provides the GLO with the authority to adopt rules on erosion; and Texas Water Code, §16.321, which provides the GLO with the authority to adopt rules on coastal flood protection.

Texas Natural Resources Code §§61.011(d), 61.013, 61.015, and 63.121 are affected by this proposed amendment.

§15.11. *Certification of Local Government Dune Protection and Beach Access Plans.*

(a) (No change.)

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993, amended February 9, 1995 [~~September 30, 1997~~], and amended June 19, 1997).

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

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

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

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

Filed with the Office of the Secretary of State on September 10, 1998.

TRD-9814350

Garry Mauro

Commissioner

General Land Office

Earliest possible date of adoption: October 25, 1998

For further information, please call: (512) 305-9129



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Subchapter E. Certification of Inspectors

37 TAC §23.61

The Texas Department of Public Safety proposes an amendment to §23.61, concerning Procedures for Certification. Language concerning large vehicles is deleted in subsection (a). Amendment to subsection (b) changes the passing grade from 75 to 80, replaces the word trooper with technician and deletes proof of present fitness. Language reference Form VI-13a is deleted from subsection (m). Subsection (p) deletes paragraph (2) and renumbers paragraph (3). Subsection (q) is deleted in its entirety.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule. There will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be more efficient administration of the Motor Vehicle Inspection Program. There is no anticipated cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Transportation Code, Chapter 548, §548.002, which provides the Texas Department of Public Safety with the authority to adopt rules necessary for the administration of this Act.

Texas Transportation Code, Chapter 548 is affected by this proposal.

§23.61. *Procedures For Certification.*

(a) Duties and responsibilities of certified inspectors. Before a person may inspect vehicles under the Texas Vehicle Inspection Act, the person will be examined and certified by the Texas Department of Public Safety.

(1) (No change.)

(2) A certified inspector shall conduct a thorough and efficient inspection of every vehicle presented for an official inspection[; except a vehicle too large to enter the inspection area].

(3)-(10) (No change.)

(b) Qualifications for certification as a certified inspector. To qualify as an inspector an applicant shall:

(1)-(7) (No change.)

(8) pass, with a grade of not less than 80 [75], a written or oral examination on the law and rules and regulations of the department pertinent to the vehicle inspection program;

(9) (No change.)

(10) submit a statutory fee of \$10 when the certification process by the technician [~~trooper~~] is completed and the person is ready for issuance of an inspector's certificate; and

(11) be exempt from the inspector certification fee if employed at a governmental inspection station. Dual authorization for another class of inspection station would require an inspector certification fee[; and]

[~~(12) provide proof of present fitness as may be required by the department.~~]

(c)-(l) (No change.)

(m) Dual authorization. A certified inspector may be certified at more than one vehicle inspection station at the same time. Inspection station owners shall furnish information as may be required by the department pertaining to inspectors employed at stations [that station on Form VI-13a] within three working days of a change in the inspector's employment.

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

(p) Withdrawal of application. An application for a license as a certified inspector may be withdrawn by the applicant at any time. An application will be deemed withdrawn when 60 days elapses:

(1) from the first failure of the inspector's written examination; or

~~(2) after the department requests proof of present fitness from the applicant; or~~

~~(2)[(3)]~~ from the successful completion of the written idle emissions examination when the applicant has not requested that a demonstration test on the testing equipment be given.

~~(q) Frequency of application. No person may apply for a license as a certified inspector within one year from the date of the withdrawal of an application by the same person.]~~

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 September 8, 1998.

TRD-9814196

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: October 25, 1998

For further information, please call: (512) 424-2890



Part VI. Texas Department of Criminal Justice

Chapter 155. Reports and Information Gathering

Subchapter B. Site Selection and Facility Names

37 TAC §155.23

The Texas Department of Criminal Justice proposes new §155.23, concerning site selection process for the location of additional facilities. The new rule defines Agency policy for determining the location of new TDCJ facilities in a manner that is fair and open, and that results in facilities sites that are cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited.

David P. McNutt Director of Financial Services for the Texas Department of Criminal Justice has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the new section as proposed.

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing the section as proposed will be the ability to construct additional facilities designed

to house and support offenders, as needed, considering all logistical support requirements, operational concerns, and legal mandates, on State-owned property or on land acquired at no cost to the State. There will be no effect on small businesses. There is no anticipated economic cost to individuals required to comply with the section as proposed.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under Government Code, §492.013, which grants general rulemaking authority; and Texas Government Code, §496.007.

Cross-reference to statute: Texas Government Code, §496.007.

§155.23. Site Selection Process for the Location of Additional Facilities.

(a) Purpose. This rule establishes Agency policy for determining the location of new TDCJ facilities in a manner that is fair and open, and that results in facilities sites that are cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility (stand-alone facility or expansion of an existing facility) designed to house and support offenders is a process requiring the review and analysis of a number of factors, including cost-effectiveness, logistical support requirements, operational concerns, and legal mandates. Generally, funding priorities will dictate that such facilities be located on State-owned property, or on land acquired at no cost to the State.

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

(1) Agency - The Texas Department of Criminal Justice.

(2) Board - The Texas Board of Criminal Justice.

(3) Facility - A substantially self-contained, permanently constructed correctional facility for housing offenders. This includes prison units, state jails, Substance Abuse Felony Punishment (SAFP) facilities, and transfer facilities, but does not include intermediate sanction facilities, community corrections facilities, as defined in §509.001, Government Code, or facilities defined in §§508.118, 508.119, or 508.320, Government Code.

(4) Prison unit - Includes a private prison under Government Code, Chapter 495, Subchapter A, a psychiatric unit, or a facility the capacity of which will be determined under, and regulated by Government Code, Chapter 499, Subchapters E (Unit and System Capacity), and B (Population Management).

(5) SAFP facility - A substance abuse felony punishment facility authorized by Government Code, §493.009.

(6) State jail - A State jail felony facility authorized by Government Code, Chapter 507.

(7) TDCJ - The Texas Department of Criminal Justice.

(8) Transfer facility - A facility authorized by Government Code, Chapter 499, Subchapter G.

(c) Procedures. It is the policy of the Board that the location of any additional facility operated by the TDCJ be carefully considered in accordance with this policy.

(1) The Texas Criminal Justice Policy Council is the State agency responsible for projecting the demand for prison, state jail, SAJP and transfer facility beds. Based on these projections, a plan will be developed by staff and adopted by the Board that details how any additional bed needs will be met, through construction or acquisition of facilities or the use of alternative sanctions. This plan will be presented to the legislature with a request for appropriations. With respect to facilities requiring siting, the plan adopted by the Board will include:

(A) recommendations for specific types of facilities needed by the TDCJ, the approximate size of each facility, and regional distribution by facility type that is needed;

(B) a description of the mission of the recommended facilities;

(C) a description of the type of offenders to be housed in each facility and the programming requirements for that population; and

(D) any recommendations for redesignation and renovation of existing facilities.

(2) Site selections will be made in accordance with and through a Request for Proposals (RFP) process, published in the Texas Register. The RFP shall be formulated and issued under the direction of the Board beginning immediately after the legislature has completed the appropriations bill. The RFP will be based on the array of facilities authorized and appropriated for by the legislature. For each round of site selections, an RFP will be developed that specifies:

(A) types of facilities needed;

(B) minimum acreage and site characteristics requirements for each facility type;

(C) requirements for geotechnical information based on drilling matrix and site preparation requirements;

(D) requirements for verified documentation of the absence of any environmental problems and historical preservation conditions;

(E) requirements for supporting information such as easement, utility and topographical maps;

(F) requirements for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs and other issues affecting the timely transferability of a site;

(G) transportation and utility requirements; and

(H) the requirements for solicited citizen input and State and local elected official input regarding a specific site.

(3) Staff review will be conducted under the direction of the TDCJ Executive Director. Planning and Programming within the Facilities Division will have the responsibility to coordinate the site selection process for the Executive Director. In accordance with the Board approved criteria and process, staff will be responsible for the development of the RFP, devising and completing scoring instruments and cost analysis for Board review and action. Information presented to the Board shall:

(A) be structured in a uniform format as illustrated in the Facilities Division policies and procedures;

(B) include data from a weighted scoring evaluation system that was developed before any review, and based on the Facilities Division policies and procedures as well as on the requirements

as outlined in an RFP, that objectively assesses each site based on the proposal, site visit and support information;

(C) include life-cycle cost calculations for a specific time period for each responsive proposal; and

(D) identify and explain any deviations from the approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:

(A) in close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;

(B) cost-effectively with respect to its proximity to other facilities in TDCJ;

(C) in close proximity to an area that would facilitate release of offenders or persons to their area of residence;

(D) in close proximity to an area that provides adequate educational opportunities and medical care;

(E) in close proximity to an area that would be capable of providing hospital and specialty clinic medical services, as well as a sufficient pool of medical personnel from which to recruit and contract; and

(F) on State-owned or donated land.

(5) The Board is responsible for site selection, but may request that the staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be based on scoring of the information contained in each submitted proposal based on RFP requirements, actual site assessment, and information obtained from external and internal sources for each site.

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 September 14, 1998.

TRD-9814493

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: October 25, 1998

For further information, please call: (512) 463-9693



Chapter 159. Special Programs

37 TAC §159.1

The Texas Department of Criminal Justice - Programs and Services Division (TDCJ-PSD) proposes an amendment to §159.1, a standard establishing the eligibility criteria for admission into a substance abuse felony punishment facility (SAFPF) operated by the Texas Department of Criminal Justice. The TDCJ-PSD proposes to amend §159.1 by adding a subsection (d) to provide that prior to admitting a probationer into a SAFPF, a community supervision and corrections department (CSCD) having jurisdiction over the person shall determine whether the individual is a foreign born alien and, if so, whether the individual is subject to a deportation proceeding.

David P. McNutt, Director of Financial Services for the Texas Department of Criminal Justice has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering this section as proposed.

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing the section as proposed will be to better utilize state resources in the delivery of substance abuse treatment services to offenders by enabling the state to concentrate on providing these services to offenders who will remain in the United States.

Comments should be directed to Melinda Bozarth, Assistant Director for TDCJ-PSD, Price Daniel Sr. Building, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments should be submitted within 30 days after the date of publication in the *Texas Register*.

The amendment is proposed under the Code of Criminal Procedures, Article 42.12, §14 (b)(3)(B), which authorizes the Texas Board of Criminal Justice to establish suitability criteria for admission into a SAFPF and Government Code, §493.009(b), which requires the Board to adopt criteria to determine the suitability of candidates for participation in a substance abuse treatment program at a SAFPF.

Cross-reference to Statute: Code of Criminal Procedures, Article 42.12, §14(b)(3)(B).

§159.1. *Substance Abuse Felony Punishment Facilities Eligibility Criteria.*

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

(d) Unless a probationer is a U.S. citizen, the individual is ineligible to participate in a SAFPF until clearance from deportation proceedings has been obtained from the Immigration and Naturalization Service (INS). Prior to admittance of a probationer in a SAFPF, the community supervision and corrections department (CSCD) having jurisdiction over the person shall determine whether the offender is a foreign born alien. The CSCD shall request that the INS determine whether the foreign born offender is deportable or not deportable. The CSCD shall notify TDCJ whether the offender is a foreign born alien and whether the offender has been determined to be deportable by INS at the time the probationer's transfer to TDCJ is scheduled.

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 September 14, 1998.

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Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: October 25, 1998

For further information, please call: (512) 463-9693

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 92. Personal Care Facilities

Subchapter B. Application Procedures

40 TAC §§92.10, 92.12, 92.18

The Texas Department of Human Services (DHS) proposes amendments to §92.10, concerning criteria for licensing; §92.12, concerning applicant disclosure requirements; §92.18, concerning license fees; §92.41, concerning standards for Type A and Type B personal care facilities, and §92.127, concerning required postings; proposes the repeal of §92.125, concerning resident's bill of rights and provider bill of rights; and proposes new §92.125, concerning resident's bill of rights and provider bill of rights, in its Personal Care Facilities chapter. The purpose of the amendments (except §92.18), repeal, and new section is to delete the current staffing ratios and require that facilities develop and post their own staffing policies, based upon the needs of the residents; require facilities to complete a Personal Care Disclosure Statement, which delineates policies, procedures, and services provided by their specific personal care facility and fully explain and give it to potential residents and their families; increase staff training requirements; require facilities to make reasonable efforts to ensure against any problems that may result from Year 2000 computer problems; and revise the Resident's Bill of Rights to include changes resulting from House Bill 3100, 75th Legislature, which amended the Rights of the Elderly, Human Resources Code, Chapter 102. The purpose of the amendment to §92.18 is to establish a fee for the Alzheimer's certification.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be protecting the public by better informing consumers about the staffing patterns in personal care facilities, and through the Disclosure Statement, about all aspects of a facility's operations; increasing the staff training requirements; requiring facilities to prepare for Year 2000 eventualities; and ensuring that facilities grant residents all rights required by law. Increased requirements for staff training may add to the costs for some personal care facilities which have had minimal staff training programs. Small facilities will have a comparatively greater cost because of the economy of scale inherent in a larger facility. DHS estimates the average annual cost for small facilities will be \$756 and for large facilities, \$1,260.

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-321, 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 amendments are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendments implement the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §§22.001-22.030.

§ 92.10. *Criteria for Licensing.*

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

(c) In respect to all licenses in effect after December 31, 1999: All services provided under licensure by the Texas Department of Human Services are required, as a condition of licensure, not to constitute a threat to the health and safety of residents 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.

(d) [(e)] An applicant for a license must affirmatively show that:

(1) the applicant, person with a disclosable interest, affiliate, and manager have not been convicted of a felony or crime involving moral turpitude in Texas or any other state;

(2) the facility meets the standards of the Life Safety Code as applicable to personal care facilities;

(3) the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); and

(4) the facility meets the standards for operation based upon an on-site survey. The initial survey for an applicant for a new license must include the observation of the care of resident(s).

(e) [(d)] A license will be issued to a facility meeting all requirements of this chapter and will be valid for one year. The maximum allowable number of residents specified on the license may not be exceeded.

§92.12. *Applicant Disclosure Requirements.*

(a) (No change.)

(b) General information required. An applicant must file with DHS an application which contains:

(1) (No change.)

(2) certificate of good standing as issued by the comptroller of public accounts; ~~and~~

(3) for initial applications and changes of ownership only, the certificate of incorporation as issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; ~~and~~ [-]

(4) a disclosure statement, using the DHS form, describing the facility's services.

(c) (No change.)

§92.18. *License Fees.*

(a) (No change.)

(b) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter D of this chapter (relating to Licensure of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) must pay an annual fee of \$100.

(c) [(b)] Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the Texas Department of Human

Services (DHS) has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D, Chapter 252, and Chapter 247, §247.003(b).

(2) DHS charges and collects an annual fee from each institution licensed under Health and Safety Code, Chapters 242 and 247, each calendar year if the amount of the nursing and convalescent trust fund is less than \$500,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide \$500,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(d) [(e)] Payment of fees. Payment of fees must be by check, cashier's check, or money order made payable to the Texas Department of Human Services. All fees are nonrefundable, except as provided by the Texas Govern- ment Code, Chapter 2005.

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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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



Subchapter C. Standards for Licensure

40 TAC §92.41

The amendment is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §§22.001-22.030.

§ 92.41. *Standards for Type A and Type B Personal Care Facilities.*

(a) Employees.

(1) (No change.)

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

[(B)] The facility must document that attendants are competent to provide personal care and have the following knowledge prior to assuming responsibilities: needs of the resident(s) and tasks to be provided; resident's health conditions and how they may affect provision of tasks; and conditions about which the attendant should notify the facility manager.]

(B) [(C)] Attendants are not precluded from performing other functions as required by the personal care facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) [(A)] A facility must have sufficient staff to:

- (i) maintain order, safety, and cleanliness;
- (ii) assist with medication regimens;
- (iii) prepare and service meals;
- (iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

~~[(B) The staff resident ratios described in this subparagraph must be maintained in a Type A or Type B facility. The facility management has the authority to define day, evening, and night shift start and end times.]~~

~~[(i) day = 1 to 16;]~~

~~[(ii) evening = 1 to 20; and]~~

~~[(iii) night = 1 to 40.]~~

~~[(I) Type A facility: Night shift staff in a 40 or fewer licensed bed capacity facility must be immediately available. In a 41+ licensed bed capacity facility, the staff must be immediately available and awake.]~~

~~[(II) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.]~~

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care prior to assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

- (i) reporting of abuse and neglect;
- (ii) confidentiality of resident information;
- (iii) universal precautions;
- (iv) conditions about which they should notify the facility manager;
- (v) residents' rights; and
- (vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

(i) providing assistance with the activities of daily living;

(ii) resident's health conditions and how they may affect provision of tasks;

(iii) safety measures to prevent accidents and injuries;

(iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status; and

(v) managing dysfunctional behavior.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Subject matter must address the unique needs of the facility. Suggested topics include:

(i) promoting resident dignity, independence, individuality, privacy, and choice;

(ii) resident rights and principles of self-determination;

(iii) communication techniques for working with persons with hearing, visual, or cognitive impairment;

(iv) communicating with families and other persons interested in the resident;

(v) common physical, psychological, social, and emotional changes that may accompany the aging process and how these changes affect residents' care;

(vi) essential facts about common physical and mental disorders that may increase with aging, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

(vii) cardiopulmonary resuscitation; and

(viii) common medications and side effects.

(D) [(4) Staff training.] Facilities that employ licensed nurses, nurse aides, or medication aides must provide annual inservice training, appropriate to their job responsibilities, from one or more of the following areas:

(i) [(A)] communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);

(ii) [(B)] assessment and nursing interventions related to the common physical and psychological changes of aging for each body system;

(iii) [(C)] geriatric pharmacology, including treatment for pain management and sleep disorders;

(iv) [(D)] common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;

(v) [~~(E)~~] common mental disorders with related nursing implications; and

(vi) [~~(F)~~] ethical and legal issues regarding advance directives, abuse and neglect, guardianship, confidentiality.

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

(d) Resident policies, admission policies, and records.

(1) Resident policies.

(A) Prior to admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. The facility must document receipt of the disclosure statement.

(B) The facility must provide residents with a copy of the Resident Bill of Rights.

(C) [~~(A)~~] The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(D) [~~(B)~~] Each facility must make available copies of the resident policies to staff and to residents and/or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(E) [~~(C)~~] The facility must provide residents information about the ombudsman program in the admission packet.

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

(e)-(i) (No change.)

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

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



Subchapter G. Miscellaneous Provisions

40 TAC §92.125

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

The repeal is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeal implements the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §§22.001-22.030.

§ 92.125. *Resident's Bill of Rights and Provider Bill of Rights.*

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 September 11, 1998.

TRD-9814440

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: December 1, 1998

For further information, please call: (512) 438-3765



40 TAC §92.125, §92.127

The new section and amendment are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 102, which establishes the rights of the elderly.

The new section and amendment implement the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §§22.001-22.030 and §102.002.

§92.125. Resident's Bill of Rights and Provider Bill of Rights.

(a) Resident's bill of rights.

(1) Each personal care facility must post the resident's bill of rights, as provided by the department, in a prominent place in the facility and written in the primary language of each resident. A copy of the Resident's Bill of Rights must be given to each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the personal care facility has the right to:

(A) be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. A provider may use physical or chemical restraints only if the use is authorized in writing by a physician and the use is necessary in an emergency to protect the resident or others from injury. A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used. Except in an emergency, restraints may only be administered by qualified medical personnel;

(B) participate in activities of social, religious, or community groups unless the participation interferes with the rights of others;

(C) practice the religion of the resident's choice;

(D) if mentally retarded, with a court-appointed guardian of the person, participate in a behavior modification program involving use of restraints, consistent with subparagraph (A) of this paragraph, or adverse stimuli only with the informed consent of the guardian;

(E) be treated with respect, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident:

(i) has the right to make his/her own choices regarding personal affairs, care, benefits, and services;

(ii) has the right to be free from abuse, neglect, and exploitation; and

(iii) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of his/her affairs;

(F) a safe and decent living environment;

(G) not be prohibited from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing any type of treatment, care, or services;

(H) complain about the resident's care or treatment. The complaint may be made anonymously or communicated by a person designated by the resident. The provider must promptly respond to resolve the complaint. The provider must not discriminate or take other punitive action against a resident who makes a complaint;

(I) receive and send unopened mail, and the provider must ensure that the resident's mail is sent and delivered promptly;

(J) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour;

(K) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(L) manage his or her financial affairs. The resident may authorize in writing another person to manage his/her money. The resident may choose the manner in which his/her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods. The resident must be given, upon request of the resident or the resident's representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility in conformance with state law;

(M) access the resident's records, which are confidential and may not be released without the resident's consent, except:

(i) to another provider, if the resident transfers residence; or

(ii) if the release is required by another law;

(N) choose and retain a personal physician and to be fully informed in advance about treatment or care that may affect the resident's well-being;

(O) participate in developing his/her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met;

(P) be given the opportunity to refuse medical treatment or services after the resident:

(i) is advised by the person providing services of the possible consequences of refusing treatment or services; and

(ii) acknowledges that he/she understands the consequences of refusing treatment or services;

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(R) privacy, while attending to personal needs and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils. If a resident is married and the spouse is receiving similar services, the couple may share a room;

(S) retain and use personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other residents;

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene;

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property;

(V) refuse to perform services for the facility, except as contracted for by the resident and operator;

(W) be informed by the provider no later than the 30th day after admission:

(i) whether the resident is entitled to benefits under Medicare or Medicaid; and

(ii) which items and services are covered by these benefits, including items or services for which the resident may not be charged;

(X) not be transferred or discharged unless:

(i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;

(ii) the resident's health is improved sufficiently so that services are no longer needed;

(iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or

(v) the resident fails, after reasonable and appropriate notice, to pay for services;

(Y) not be transferred or discharged, except in an emergency situation, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:

(i) that the facility intends to transfer or discharge the resident;

(ii) the reason for the transfer or discharge;

(iii) the effective date of the transfer or discharge;

(iv) if the resident is to be transferred, the location to which the resident will transferred; and

(v) any appeal rights available to the resident;

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations;

(AA) have access to the service of a representative of the State Long Term Care Ombudsman Program, Texas Department on Aging; and

(BB) execute an advance directive, under the Natural Death Act (Chapter 672, Health and Safety Code) or Chapter 135, Civil Practice and Remedies Code, or designate a guardian in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Provider's bill of rights.

(1) Each personal care facility must post a providers' bill of rights in a prominent place in the facility.

(2) The providers' bill of rights must provide that a provider of personal care services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and personal care facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the personal care facility. During evening hours and on weekends or holidays, notice to DHS must be made to 1-800-458-9858;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

§92.127. Required Postings.

Each facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

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

(6) Provider Bill of Rights; ~~and~~

(7) the telephone number of the Office of the State Long Term Care Ombudsman; and

(8) the facility's normal 24-hour staffing patterns.

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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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter B. Insurance Advertising, Certain Trade Practices, and Solicitation

28 TAC §21.102

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed amendment to

§21.102, which appeared in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2715).

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

TRD-9814327

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: September 9, 1998

For further information, please call: (512) 463-6327



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

The Office of the Governor adopts the repeal of the following sections under Chapter 3, Subchapter A §3.5. Subchapter B §3.125, §3.225, §3.325, §3.425, §3.525, §3.625, §3.660, §3.725, §3.925, §3.955, §3.1025. Subchapter C §3.4030, §3.4045, §3.4065, §3.4090, §3.4130, §3.7005 without changes as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 7947). Subchapter D remains unchanged. Subchapter A concerns Criminal Justice Division-General Powers. Subchapter B concerns Fund Specific Grant Policies. Subchapter C concerns General Eligibility Requirements. Subchapter D concerns Criminal Justice Division Advisory Boards. This Chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

No comments were received regarding adoption of the repeals.

Subchapter A. Criminal Justice Division-General Powers

Division 1. Applicability

1 TAC §3.5

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a)(11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9814380

Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594

Subchapter B. Fund Specific Grant Policies

Division 1. State Criminal Justice Planning Fund

1 TAC §3.125

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594

Division 2. Juvenile Justice and Delinquency Prevention Act Fund

1 TAC §3.225

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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Division 3. Title V Delinquency Prevention

1 TAC §3.325

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2594

◆ ◆ ◆
Division 4. Safe and Drug Free Schools and Communities Act Fund

1 TAC §3.425

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2594

◆ ◆ ◆
Division 5. Victims of Crime Act Fund

1 TAC §3.525

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf
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For further information, please call: (512) 475-2594

◆ ◆ ◆
Division 6. Crime Stoppers Assistance Fund

1 TAC §3.625, §3.660

The repeals are authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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◆ ◆ ◆
Division 7. Texas Narcotics Control Program

1 TAC §3.725

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2594

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Division 8. Violence Against Women Act Fund

1 TAC §3.925, §3.955

The repeals are authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594

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Division 9. Challenge Grants

1 TAC §3.1025

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594

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Subchapter C. General Grant Program Policies

Division 3. Special Conditions and Required Documents

1 TAC §§3.4030, 3.4045, 3.4065, 3.4090, 3.4130

The repeals are authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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Division 6. Program Monitoring and Audits

1 TAC §3.7005

The repeal is authorized under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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Chapter 3. Criminal Justice Division

The Office of the Governor adopts amendments to Chapter 3, Subchapter B §3.110, §3.115, §3.150, §3.160, §3.165, §3.180, §3.185, §3.210, §3.215, §3.240, §3.250, §3.260, §3.280, §3.285, §3.310, §3.315, §3.350, §3.380, §3.385, §3.405, §3.410, §3.420, §3.440, §3.450, §3.480, §3.485, §3.500, §3.505, §3.510, §3.515, §3.535, §3.540, §3.545, §3.550, §3.555, §3.560, §3.585, §3.615, §3.635, §3.640, §3.645, §3.685, §3.705, §3.710, §3.715, §3.740, §3.760, §3.770, §3.785, §3.910, §3.915, §3.935, §3.940, §3.945, §3.950, §3.960, §3.970, §3.980, §3.985, §3.1015, §3.1030, §3.1050, §3.1060, §3.1080, §3.1085. Chapter 3 Subchapter C §3.2000, §3.2005, §3.2010, §3.3045, §3.3050, §3.3055, §3.3060, §3.3065, §3.3070, §3.3075, §3.4000, §3.4015, §3.4025, §3.4055, §3.4070, §3.4075, §3.4080, §3.4095, §3.4100, §3.4105, §3.4115, §3.4120, §3.4125, §3.4135, §3.4140, §3.5000, §3.5005, §3.6000, §3.6010, §3.6015, §3.6020, §3.6025, §3.6030, §3.6040, §3.6045, §3.6050, §3.6055, §3.6060, §3.6065, §3.6070, §3.6075, §3.6080, §3.6090, §3.6095, §3.6100, §3.7000, §3.7010, §3.7015, §3.7020, §3.8000. The Office of the Governor adopts new Subchapter A §3.5, Subchapter B §3.190, §3.295, §3.395, §3.490, §3.495, §3.590, §3.696, §3.790, §3.990, §3.1100, §3.1105, §3.1110,

§3.1115, §3.1120, §3.1130, §3.1135, §3.1140, §3.1165, §3.1180, §3.1185, Subchapter C §3.2020, §3.3066, §3.3067, §3.4145, §3.4150, §3.4155, §3.5004, §3.6105, §3.6110, §3.6115, §3.6120 without changes to the text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 7947). Subchapter D remains unchanged. Subchapter A concerns Criminal Justice Division-General Powers. Subchapter B concerns Fund Specific Grant Policies. Subchapter C concerns General Eligibility Requirements. Subchapter D concerns Criminal Justice Division Advisory Boards. This Chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

No comments were received regarding adoption of the sections.
Subchapter A. Criminal Justice Division-General Powers

Division 1. Applicability

1 TAC §3.5

The section is adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this 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.

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TRD-9814361

Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594



Subchapter B. Fund Specific Grant Policies

Division 1. State Criminal Justice Planning Fund

1 TAC §§3.110, 3.115, 3.150, 3.160, 3.165, 3.180, 3.185, 3.190

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594



Division 2. Juvenile Justice and Delinquency Prevention Act Fund

1 TAC §§3.210, 3.215, 3.240, 3.250, 3.260, 3.280, 3.285, 3.295

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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Division 3. Title V Delinquency Prevention

1 TAC §§3.310, 3.315, 3.350, 3.380, 3.385, 3.395

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

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Office of the Governor

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For further information, please call: (512) 475-2594



Division 4. Safe and Drug-Free Schools and Communities Act Fund

1 TAC §§3.405, 3.410, 3.420, 3.440, 3.450, 3.480, 3.485, 3.490, 3.495

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594



Division 5. Victims of Crime Act Fund

1 TAC §§3.500, 3.505, 3.510, 3.515, 3.535, 3.540, 3.545, 3.550, 3.555, 3.560, 3.585, 3.590

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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Division 6. Crime Stoppers Assistance Fund

1 TAC §§3.615, 3.635, 3.640, 3.645, 3.685, 3.696

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

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Division 7. Texas Narcotics Control Program

1 TAC §§3.705, 3.710, 3.715, 3.740, 3.760, 3.770, 3.785, 3.790

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594



Division 8. Violence Against Women Act Fund

1 TAC §§3.910, 3.915, 3.935, 3.940, 3.945, 3.950, 3.960, 3.970, 3.980, 3.985, 3.990

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2594



Division 9. Challenge Grants

1 TAC §§3.1015, 3.1030, 3.1050, 3.1060, 3.1080, 3.1085

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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Division 10. Residential Substance Abuse Treatment

1 TAC §§3.1100, 3.1105, 3.1110, 3.1115, 3.1120, 3.1130, 3.1135, 3.1140, 3.1165, 3.1180, 3.1185

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf
Deputy General Counsel
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Subchapter C. General Grant Program Policies

Division 1. General Eligibility Requirements

1 TAC §3.2000

The section is adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this 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.

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1 TAC §§3.2005, 3.2010, 3.2020

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Division 2. General Grant Budget Requirements

1 TAC §§3.3045, 3.3050, 3.3055, 3.3060, 3.3065-3.3067, 3.3070, 3.3075

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Division 3. Special Conditions and Required Documents

1 TAC §§3.4000, 3.4015, 3.4025, 3.4055, 3.4070, 3.4075, 3.4080, 3.4095

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf
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1 TAC §§3.4100, 3.4105, 3.4115, 3.4120, 3.4125, 3.4135, 3.4140, 3.4145, 3.4150, 3.4155

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf
Deputy General Counsel
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Division 4. Award and Grant Acceptance

1 TAC §§3.5000, 3.5004, 3.5005

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Division 5. Administering Grants

1 TAC §§3.6000, 3.6010, 3.6015, 3.6020, 3.6025, 3.6030, 3.6040, 3.6045, 3.6050, 3.6055, 3.6060, 3.6065, 3.6070, 3.6075, 3.6080, 3.6090, 3.6095

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf
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1 TAC §§3.6100, 3.6105, 3.6110, 3.6115, 3.6120

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2594



Division 6. Program Monitoring and Audits

1 TAC §§3.7000, 3.7010, 3.7015, 3.7020

The sections are adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these 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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Division 7. Governing Directives

1 TAC §3.8000

The section is adopted under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this 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.

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Part IV. Office of the Secretary of State

Chapter 95. Uniform Commercial Code

The Office of the Secretary of State adopts the repeal of §§95.1.-95.5, concerning General Information and Correspondence, §§95.31-95.36, concerning Filing, §95.41, concerning Information Requests, §95.51, concerning Standard Forms, and §§95.61-95.62, concerning Rejection, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 7879) and will not be republished.

The purpose of the repeals is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

No comments were received regarding the repeal of the old rules.

Subchapter A. General Information and Correspondence

1 TAC §§95.1-95.5

The repealed sections provide current filing policies and procedures for the Uniform Commercial Code Section. The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

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For further information, please call: (512) 463-5701



Subchapter B. Filing

1 TAC §§95.31-95.36

The repealed sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5,

Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Information Requests

1 TAC §95.41

The repealed section is adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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Subchapter D. Standard Forms

1 TAC §95.51

The repealed section is adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14,

Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Rejection

1 TAC §95.61, §95.62

The repealed sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 95. Uniform Commercial Code

The Office of the Secretary of State adopts new sections §§95.100-95.117 General Provisions, §§95.400-95.414 UCC Information Management System, §§95.440-95.450 EDI Documents, §§95.500-95.520 Filing and Data Entry Procedures, §§95.601-95.605 Search Requests and Reports, §§95.700-95.706 Other Notices of Liens, with changes and new sections §§95.200-95.207 Information Required for Indexing, §§95.300-95.304 Acceptance and Refusal of Documents, and §§95.800-95.803 Rulemaking Procedure, without changes to the pro-

posed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 7879).

The purpose of the new sections is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

The new sections provide current filing policies and procedures for the Uniform Commercial Code Section.

No comments were received regarding adoption of the new rules.

Subchapter A. General Provisions

1 TAC §§95.100-95.117

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

§95.100. *Policy Statement.*

(a) The administration of the UCC has an important impact on the economy and upon the rights of the public, in this state and in the United States. The volume of international, interstate and multi-state transactions pursuant to the UCC requires that the administration of the UCC be conducted in a manner that promotes both local and multi-jurisdictional commerce by striving for uniformity in policies and procedures among the various states.

(b) The policy of the filing office is that the interpretation and implementation of the filing office's duties and responsibilities shall be expressed in a written set of administrative rules, which the public shall have a voice in creating. Such rules have the following purposes:

(1) to simplify and improve the administration of the UCC by promoting uniform UCC filing procedures in this state and in the nation,

(2) to simplify the public's ability to discover and understand the UCC filing procedures of the various states by establishing a uniform framework for describing the procedures,

(3) to increase public access to information,

(4) to increase public participation in the formulation of administrative policy and procedures, and

(5) to increase public accountability of the filing officer.

§95.101. *Definitions.*

Words and terms shall have the meanings provided in this rule, unless the context requires otherwise. Words and terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such words and terms in the UCC, except as the context otherwise clearly requires.

(1) "Filing office" and "filing officer" mean Texas Secretary of State.

(2) "Remitter" means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

(3) "UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

(4) "UCC document" means an original financing statement, a statement of amendment of a financing statement, a statement of assignment of interest in collateral, a statement of release of interest in collateral, a continuation statement, or a termination statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings, it being understood that UCC documents may be expressed or transmitted electronically or through media other than tangible writings. (Note: this definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in UCC section 9-105(f), as it has been adopted in this state.)

(5) "Original financing statement" means a UCC document containing the information required to be in a financing statement pursuant to Subchapter B of this chapter and that, when filed, provides the information to establish the initial record of the existence of a financing statement in the filing officer's UCC information management system.

(6) "Financing statement" means an original financing statement and all UCC documents that relate to the original financing statement.

(7) "Secured party of record" means a secured party shown on the filing officer's information management system as active with respect to a financing statement.

(8) "Identification of the original financing statement" means the unique identifying information (including, at a minimum, a filing number and date of filing) assigned to an original financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. The filing number is the last two year digits followed by sequential number beginning with 000001 for each calendar year. The filing number bears no relation to the time of filing and is not an indicator of priority.

§95.102. *Singular and Plural Forms.*

Singular nouns shall include the plural form, and plural nouns shall include the singular form, unless the context requires otherwise.

§95.103. *Place to File.*

(a) The Office of the Secretary of State is the office for filing UCC documents relating to all types of collateral except the following. Financing statements concerning the following classes of goods are to be filed with the county clerk:

(1) consumer goods used or bought for use primarily for personal, family, or household purposes subject to section 9-109, Texas Business and Commerce Code;

(2) fixtures when they become so related to particular real estate that an interest in them arises under the real estate law of the state in which the real estate is situated subject to section 9-313, Texas Business and Commerce Code;

(3) timber specified in the UCC as, "Timber to be cut. " subject to section 9-203, Texas Business and Commerce Code; or

(4) minerals includes an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead subject to subsection 4 of section 9-103, Texas Business and Commerce Code.

(b) The proper place to file in order to perfect a security interest in consumer goods is with the county clerk of the debtor's residence. If the debtor is not a resident of this state, then the filing should be made in the county where the goods are kept.

§95.104. Filing Office Identification.

(a) Street address. The street addresses of the filing office are as follows.

(1) General street address: Secretary of State, Uniform Commercial Code, 1019 Brazos, Suite 505, Austin, TX 78701.

(2) Courier street address: Secretary of State, Uniform Commercial Code, 1019 Brazos, Room B-13, Austin, TX 78701.

(b) Mailing address. The mailing address of the filing office is Secretary of State, Uniform Commercial Code, PO Box 13193, Austin, TX 78711-3193.

(c) Telephone numbers. The telephone numbers of the filing office are as follows.

(1) General office number: 512-475-2700.

(2) Lien search requests: 512-475-2705.

(3) Financing statement filing information: 512-475-2703.

(4) Financing statement change filing information: 512-475-2704.

(d) Telefacsimile (fax) numbers. The filing office maintains the following numbers for the purpose of telefacsimile (fax) transmissions.

(1) 512-463-1423 for transmission of filings.

(2) 512-475-2812 for transmission of search requests.

(3) 512-475-2848 for communications other than filings and search requests.

(e) On-line information service. The filing officer offers on-line information services at 512-475-2740.

(f) Telephone device for the deaf (TDD). The filing office offers TDD service at 800-735-2989.

§95.105. Office Hours.

(a) In person. The filing office is open to the public between the hours of 8:00 AM and 5:00 PM CST, Monday through Friday, except for state holidays.

(b) Telephone. The filing office receives telephone calls between the hours of 8:00 AM and 5:00 PM CST, Monday through Friday, except for state holidays.

(c) Telefacsimile (fax) transmissions. The filing office receives transmissions by telefacsimile 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service.

(d) Electronic filing transmissions. The filing office is open for electronic filing transmissions between the hours of 7:00 AM and 7:00 PM CST, Monday through Friday, except for state holidays.

§95.106. UCC Document Delivery.

UCC documents may be tendered for filing at the filing office as follows.

(1) Personal delivery, at the street address stated in §95.104(a)(1) of this title (relating to Filing Office Identification). The file time for a UCC document delivered by this method is when delivery of the UCC document is accepted by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

(2) Courier delivery, at the street address stated in §95.104(a)(2) of this title. The file time for a UCC document delivered by this method is the 8:00 AM CST on a day the filing office is open to the public (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected).

(3) Postal service delivery, to the street address stated in §95.104(a)(1) of this title or the mailing address stated in §95.104(b) of this title. The file time for a UCC document delivered by this method is the 8:00 AM CST on a day the filing office is open to the public (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected).

(4) Telefacsimile (fax) delivery, to the telephone number stated in §95.104(d)(1)-(3) of this title. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC document is first examined by a filing officer for processing even though the telefacsimile device may indicate that the UCC document was received at an earlier time. Filing fees must be paid by credit card.

(5) Electronic data interchange (EDI). UCC documents may be transmitted electronically using the ANSI X12 154 transmission standard as described in §§95.440 et seq. of this title (relating to EDI Documents). The file time for a UCC document delivered by this method is the time that the filing office's EDI system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

§95.107. Search Request Delivery.

UCC search requests may be delivered to the filing office as follows. Requirements concerning search requests are set forth in §95.601 of this title (relating to Search Requests).

(1) Personal delivery, at the street address stated in §95.104(a)(1) of this title (relating to Filing Office Identification).

(2) Courier delivery, at the street address stated in §95.104(a)(2) of this title.

(3) Postal service delivery, to the street address stated in §95.104(a)(1) of this title or the mailing address stated in §95.104(b) of this title.

(4) Telephone requests, to the telephone number stated in §95.104(c)(2) of this title.

(5) Telefacsimile (fax) delivery, to the telephone numbers stated in §95.104(d)(1)-(2) to this title.

(6) Electronic data interchange (EDI). UCC search requests may be transmitted electronically as described in §95.440 of this title (relating to Definitions).

(7) On-line information service. UCC search requests may be entered on-line as described in §§95.601-95.605 of this title (relating to Search Requests and Reports). To obtain on-line access contact filing office.

(8) Original financing statement. UCC search requests upon a debtor named on an original financing statement may be made by an appropriate indication on the face of the original financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the original financing statement.

§95.108. Requirements to Qualify for Standard Form Fee.

Forms for UCC documents that conform to the requirements of this rule shall be accompanied by the standard form fee. Other UCC documents shall be accompanied by the nonstandard form fee.

(1) PEB/IACA forms approved. A form approved for the relevant UCC document by the Permanent Editorial Board of the National Conference of Commissioners on Uniform State Laws and the American Law Institute or by the International Association of Corporation Administrators qualifies for filing with the standard form fee.

(2) Secretary of State-approved. A form for the relevant UCC document approved by the Office of the Secretary of State qualifies for filing with the standard form fee. Copies of all such forms then approved shall be distributed with these rules when they are distributed by the filing office and the filing office shall cause copies of such forms to be made available to prospective filers and remitters upon request.

(A) Specifications pertaining to the prescribed forms or a list of approved printers and form suppliers may be obtained by writing to the Office of the Secretary of State, Uniform Commercial Code Section, PO Box 13193, Austin, TX 78711-3193.

(B) Prior permission to print prescribed forms must be obtained in writing from the Agency. A printer must submit five complete sets of each type of form to the Agency for examination. Within 30 days of receipt of such forms, the Agency will transmit to the printer written notification of the results of the examination. Such notification will grant permission to print forms or express the reasons for refusal to grant permission.

(C) Where a printer produces forms with a name other than that of the approved printer in the bottom right corner, the printer must notify the Agency in writing of such name(s) and include a sample form for each name(s). If these entities sell forms, the printer must inform the Agency that the entity is a supplier and give the supplier's business address and telephone number for inclusion on the Agency supplier list.

(D) The Agency will notify approved printers of any revisions which must be made to the prescribed forms. Printers must submit five revised forms of each type to the Agency for examination. Within 30 days of receipt of the revised forms, the Agency will transmit written notification of the results of the examination. The notification will grant permission to print forms or express the reasons for refusal to grant permission.

(E) The Agency may suspend permission to print forms at any time for failure to comply with this section or failure to maintain compliance with form specifications.

(3) Nonstandard form. When labels or any other medium are affixed to areas other than the return address or collateral description on the face of a standard form or additional pages are

attached to the prescribed form or when any other form is used, the form will be subject to the nonstandard form filing fee.

(4) Electronic filings. A UCC document transmitted electronically pursuant to the ANSI X12 154 standard and the procedures set forth in §§95.440 et seq. of this title (relating to EDI Documents) qualifies for filing with the standard form fee.

§95.109. Standard Form - UCC Search.

A form that meets the requirements regarding dimensions and location of information on the search form approved by the Office of the Secretary of State qualifies for the standard UCC search fee. Other UCC search requests shall be accompanied by the nonstandard form UCC search fee.

§95.110. Forms Suppliers.

(a) The current suppliers of UCC forms identified in §95.108(1) of this title (relating to Requirements to Qualify for Standard Form Fee) or that meet the requirements of §95.108(2) of this title are available upon request from the Secretary of State. The mailing address is stated in §95.104(b) of this title (relating to Filing Office Identification) and the telephone number is stated in §95.104(c)(2) of this title.

(b) Updated lists. The filing office will make updated lists of forms suppliers available to prospective filers and remitters upon request.

§95.111. Filing Fees.

(a) Standard form filing fee. The fee for filing a UCC document delivered in a standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a standard form is pursuant to §9.403(e), Texas Business and Commerce Code.

(b) Nonstandard form filing fee. The fee for filing a UCC document delivered in a form other than the standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a form other than the standard form is pursuant to §9.403(e), Texas Business and Commerce Code.

(c) UCC search fee. The fee for a UCC search request delivered in a standard form or a form other than the standard form is pursuant to §9.407(b), Texas Business and Commerce Code.

(d) UCC search - copies. The fee for UCC search copies (or page equivalent for electronically transmitted search responses) is pursuant to §9.407(b), Texas Business and Commerce Code.

(e) Self-service pages. The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code and §71.8, Texas Administrative Code.

(f) Special fees for fax filings.

(1) Standard form filing fee. The fee for filing a UCC document delivered in a standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a standard form is pursuant to §9.403(e), Texas Business and Commerce Code. The fee for expedite handling is pursuant to §405.032, Texas Government Code and the fee per acknowledgment page is pursuant to §405.031, Texas Government Code.

(2) Nonstandard form filing fee. The fee for filing a UCC document delivered in a form other than the standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a form other than the standard form is pursuant to §9.403(e), Texas Business and Commerce Code. The fee for expedite handling is pursuant to §405.032, Texas

Government Code and the fee per acknowledgment page is pursuant to §405.031, Texas Government Code.

(g) Special fees for fax UCC searches.

(1) Standard form filing fee. The fee for a UCC request delivered in a standard form is pursuant to §9.407(b), Texas Business and Commerce Code. The fee for the fax service is pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

(2) Nonstandard form filing fee. The fee for a UCC request delivered in a form other than the standard form is pursuant to §9.407(b), Texas Business and Commerce Code. The fee for the fax service is pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

§95.112. Expedited Services.

The following information, instructions, and fees are applicable to requests for expedited service.

(1) Expedited filing. Documents presented in person or fax are treated as an expedite filing and subject to an expedite handling fee pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

(2) Special fees for fax filings - per page copies.

(A) The fee for regular service delivered in a turnaround time of five to seven working days for a standard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this regular service are pursuant to §9.407, Texas Business and Commerce Code. The fee for regular service delivered in a turnaround time of five to seven working days for a nonstandard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this regular service is pursuant to §9.407, Texas Business and Commerce Code.

(B) The fee for expedite service delivered in a turnaround time of one working day for a standard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this expedite service is pursuant to §9.407, Texas Business and Commerce Code and an expedite handling fee is pursuant to §405.032, Texas Government Code. The fee for expedite service delivered in a turnaround time of one working day for a nonstandard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this regular service is pursuant to §9.407, Texas Business and Commerce Code and an expedite handling fee pursuant to §405.032, Texas Government Code. A completed expedite search request may either be mailed, faxed, or picked up in person.

(3) How to request expedited service.

(A) Expedited filing. Documents presented in person and fax are treated as expedite filing and subject to an expedite handling fee described in subsection (1) of this subchapter.

(B) Responding to UCC search request. Documents may be requested by mail, telephone, fax, SDA, and in person.

§95.113. Methods of Payment.

Filing fees and fees for public records services may be paid by the following methods.

(1) Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.

(2) Checks. Checks made payable or endorsed to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for

payment if they are cashier's checks or certified checks drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office. All checks must be drawn on a U.S. bank. The identity of acceptable banks will be made available to prospective filers and remitters upon request.

(3) Electronic funds transfer. The filing office will accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Debit cards. The filing office accepts payment by debit cards issued by approved debit card issuers. A current list of approved debit card issuers is available from the filing office. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

(5) Credit cards. The filing office accepts payment by the following credit cards issued by approved credit card issuers: MasterCard, Visa, and Discover. A current list of approved credit card issuers is available from the filing office. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

§95.114. Overpayment and Underpayment Policies.

(a) Overpayment. The filing officer shall refund the amount of an overpayment exceeding \$1.00 to the remitter pursuant to §405.034, Texas Government Code. The filing officer shall refund an overpayment of \$1.00 or less upon the written request of the remitter.

(b) Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall do the following: The document shall be returned to the remitter as provided in §95.304 of this title (relating to Procedure Upon Refusal). A refund of a partial payment may be included with the document or delivered under separate cover.

§95.115. Public Records Services.

Public records services are provided on a non-discriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC documents and copies of data from the UCC information management system.

(1) Individually identified documents. Copies of individually identified UCC documents are available in the following forms: Copies provided on paper.

(2) Bulk copies of documents. Bulk copies of UCC documents are available in the following forms: Paper, microfilm, TIF files and EDI documents.

(3) Data from the information management system. A list of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Data from the information management system is available as follows.

(A) Full extract. A bulk data extract of information from the UCC information management system is available on a biannually and yearly basis.

(B) Update extracts. Updates of information from the UCC information management system are available on a daily basis.

(C) Format. Extracts from the UCC information management system are available in the following formats: Magnetic tape (9 track, 6250 bpi) and 8mm tape.

(4) Direct on-line services. On-line services make UCC data available on a subscription basis. A description of subscription services is available from the filing officer.

§95.116. Fees for Public Records Services.

Fees for public records services are established as follows.

(1) Paper copies of individual documents.

(A) Regular delivery method. The fee for UCC search copies is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses).

(B) Fax delivery. The fee for a fax service is pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

(2) Bulk copies of documents.

(A) Paper. The fee for bulk copies of UCC documents is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses), §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(B) Microfilm. The fee for microfilm of UCC documents is pursuant to §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(C) TIF files. The fee for TIF files of UCC documents is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses), §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(D) EDI documents. The fee for electronically transmitted UCC documents is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses), §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(3) Data from the information management system.

(A) Full extract. The fee for a bulk data extract is pursuant to §405.018 and §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(B) Update extracts. The fee for an update extract is pursuant to §405.018 and §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(C) Format. Extracts from the UCC information management system are available in formats pursuant to §405.018 and §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(4) Third party on-line services. The fee for a UCC search by debtor name or financing statement number is pursuant to §405.018, Texas Government Code and §71.8, Texas Administrative Code. The fee for a UCC search by secured party name is pursuant to §405.018, Texas Government Code and §71.8, Texas Administrative Code. Users are required to post a minimum deposit with the secretary of state's office to establish an account for Direct Access in accordance with §405.018, Texas Government Code and §71.8, Texas Administrative Code.

§95.117. New Practices and Technologies.

The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based Article 9 filing system utilizing any of such technologies. In developing and utilizing technologies and practices, the filing officer shall, to the greatest extent feasible, take into account compatibility and consistency with, and whenever possible be uniform with, technologies, practices, policies and regulations adopted in connection with Article 9 filing systems in other states.

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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Assistant Secretary of State

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Subchapter B. Information Required for Indexing

1 TAC §§95.200-95.207

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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Subchapter C. Acceptance and Refusal of Documents

1 TAC §§95.300-95.304

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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Subchapter D. UCC Information Management System

1 TAC §§95.400-95.414

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§95.400. Policy Statement.

The filing officer uses an information management system to store, index, and retrieve information relating to UCC documents. The information management system includes an index of the names of

debtors with an active status. The rules in this subchapter describe the UCC information management system.

§95.401. Primary Data Elements.

The primary data elements used in the UCC information management system are the following.

(1) Identification numbers.

(A) Each original financing statement is identified by unique information assigned by the filing officer described in §95.101(8) of this title (relating to Definitions). Identification of the original financing statement is stamped on tangible UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each original financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the original financing statement.

(B) A UCC document other than an original financing statement is identified by unique information assigned by the filing officer. In the information management system, records of all UCC documents other than original financing statements are linked to the record of the original financing statement to which the UCC documents relate.

(2) Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an original financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of parties. In the information management system, a record is created for each debtor and secured party for each financing statement. Each record of each debtor and secured party has a status of active or inactive as described in §95.406 et seq. of this title (relating to UCC Information Management System).

(6) Status of financing statement. In the information management system, each financing statement has a status of active, lapsed, terminated, or revoked.

(7) Page count. The total number of pages in a UCC document is maintained in the information management system.

§95.402. Names of Debtors Who are Individuals.

For the purpose of this rule, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor, a secured party, or an assignee on a UCC document who is an individual.

(1) Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of entities. Separate data entry fields are established for first (given), middle (given), last names (surnames or family names), and suffix (given) of individuals. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

(2) Truncation - individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows.

- (A) First name: 25 characters.
- (B) Middle name: 25 characters.
- (C) Last name: 35 characters.
- (D) Suffix: 10 characters.

§95.403. Names of Debtors Who are Entities.

For the purpose of this rule, "entity" means a legal person who is not an individual under §95.402 of this title (relating to Names of Debtors Who are Individuals), except the estate of a decedent. This rule applies to the name of an entity who is a secured party, or an assignee on a UCC document.

(1) Single field. The names of entities are stored in files that includes only the names of entities and not the names of individuals. A single field is used to store an entity name.

(2) Truncation - entity names. The business name field in the UCC database is fixed in length. The maximum length is 60 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

§95.404. Estates.

Although they are entities, estates are treated as if the decedent were the debtor under §95.402 of this title (relating to Names of Debtors Who are Individuals).

§95.405. Trusts.

Trusts are treated as entities. If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. If the trust is not so named, the name of the settlor is used followed by the word "Trustee" along with such information provided by the filer to distinguish the debtor trust from other trusts having the same settlor.

§95.406. Original Financing Statement.

Upon the filing of an original financing statement the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party. The status of a secured party named on the document shall be active, except that if the document names a total assignee, a secured party/assignor shall not have an active status as a secured party and a secured party/total assignee shall have active status as a secured party.

(2) Status of debtor. The status of a debtor named on the document shall be active.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless otherwise required by statute.

§95.407. Statement of Amendment of a Financing Statement.

Status of secured party and debtor. A statement of amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

(1) Collateral amendment or address change. A statement of amendment that amends only the collateral description or one or more party's(ies) address has no effect upon the status, active or

inactive, of any debtor or secured party. If a statement of amendment is authorized by less than all of the active secured parties (or, in the case of an amendment that adds collateral, less than all of the active debtors), the statement affects only the interests of each authorizing secured party (or debtor).

(2) Debtor name change. A statement of amendment that changes a debtor's name has no effect on the status, active or inactive, of any debtor or secured party, except that the related original financing statement and all UCC documents that include an identification of such original financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such original financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

(3) Secured party name change. A statement of amendment that changes the name of a secured party has no effect on the status, active or inactive, of any debtor and has no effect on the status of any secured party unless the secured party whose name is being changed has authorized the statement of amendment, in which case the old name of the secured party is deleted from the UCC information management system and is replaced with the new name.

(4) Addition of a debtor. A statement of amendment that adds a new debtor name has no effect upon the status of any party to the amendment or the related original financing statement, except the new debtor name shall be added as a new active debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

(5) Addition of a secured party. A statement of amendment that adds a new secured party shall not affect the status of any party, except that the new secured party name shall be added as a new active secured party on the financing statement.

(6) Deletion of a debtor. A statement of amendment that deletes a debtor shall have no effect on the status, active or inactive, of any party to the financing statement.

(7) Deletion of a secured party. A statement of amendment that deletes a secured party shall have no effect on the status, active or inactive, of any party to the financing statement, unless it is authorized by the secured party being deleted, in which case such secured party is rendered inactive if such secured party is not the last active secured party of record. The status of the last active secured party can not be inactivated.

§95.408. Statement of Assignment of Interest in Collateral.

(a) Designation as full or partial assignment. A statement of assignment should designate whether the assignment of a secured party's interest in all collateral under the financing statement is a full or partial assignment of that interest. The designation shall apply to all secured parties named on the statement of assignment. If no designation is made, the statement of assignment will be treated as a partial assignment.

(b) Full assignment - status of secured parties. Upon filing a statement of full assignment, the status of a secured party of record named on the statement of assignment as an authorizing assignor shall be inactive. The status of an assignee shall be that of an active secured party.

(c) Partial assignment - status of secured parties. Upon filing a statement of partial assignment, the status of a secured party of record named on the statement of assignment as an authorizing

assignor shall continue to be active. The status of the assignee shall also be that of an active secured party.

(d) Status of other secured parties. The filing of a statement of assignment shall have no effect upon the status of a secured party not named on the statement of assignment as an authorizing assignor.

(e) Status of debtor. The filing of a statement of assignment shall have no effect upon the status of a debtor.

(f) Status of financing statement. A statement of assignment shall have no effect upon the status (active, lapsed, terminated, or revoked) of the financing statement.

§95.409. Continuation Statement.

(a) Continuation of lapse date. Upon the timely filing of a continuation statement by any secured party(ies) of record, the lapse date of the financing statement shall be continued for the period authorized by the UCC only with respect to such secured party(ies).

(b) Status of secured party. The filing of a continuation statement shall have no effect upon the status, active or inactive, of a secured party.

(c) Status of debtor. The filing of a continuation statement shall have no effect upon the status of a debtor.

(d) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

§95.410. Termination Statement.

(a) Status of secured party. Upon filing a termination statement, the status of each secured party named on the termination statement as an authorizing secured party shall be inactive. The filing of a termination shall have no effect upon the status of a secured party that is not named as an authorizing secured party on the termination statement.

(b) Status of debtor. The filing of a termination statement shall have no effect upon the status of a debtor.

(c) Status of financing statement. A financing statement shall have the status of terminated upon the filing of a termination statement that, together with all previously filed termination statements, name all active secured parties of record.

§95.411. Procedure Upon Lapse Date.

On the date upon which a financing statement would lapse in the absence of the timely filing of a continuation statement, the information management system performs or is caused to perform the following operations.

(1) Status of secured party. The status of each secured party remains active if any then-active secured party has filed a timely continuation statement.

(2) Status of debtor. The status of a debtor remains active, if any then-active secured party has filed a timely continuation statement. The status of a debtor is inactive in the absence of a timely filing of a continuation statement by any then-active secured party.

(3) Status of financing statement. The status of a financing statement shall be continued where required by statute and for the period of time required by statute if a continuation statement has been timely filed by a then-active secured party. The status of a financing statement shall be lapsed in the absence of the timely filing of a continuation by any then-active secured party.

§95.412. Statement of Release of Collateral.

The filing officer maintains no record of the designation of a statement of release of collateral as a full or partial release of collateral.

(1) Status of secured party. The filing of a statement of release of collateral shall have no effect upon the status of a secured party on the financing statement.

(2) Status of debtor. The filing of a statement of release of collateral shall have no effect on the status of a financing statement.

§95.413. System Security.

(a) Physical Security. The computer system resides on the third floor of the James Earl Rudder Building. There are two doors that allow entry into the computer room. These two doors are secured with combination cipher locks. A third entry is located by the service elevator. This entry requires a key to open the elevator doors. Cipher lock and key access is limited to selected personnel.

(b) Limitations on Electronic Access. The internal on-line system and the external, Direct Access system has several layers of access security passwords. Menus are controlled by the user department supervisors. Internal and external access is customized to fit functional needs.

(c) Procedures to control modification to the system. All of the software programs reside in a production environment, which is inaccessible to application developers. System's manager and operation's manager control access to these areas and these areas can only be accessed by developers in a read only mode. When system changes are requested, the following steps are taken:

(1) The developer transfers the production program(s) to a development environment.

(2) The change is then made and tested in the development environment, which is a functional image of the production environment.

(3) Once the change is complete and approved to be moved to production, the developer completes a CCL (Change Control Log).

(4) The CCL is approved and initialed by the Application Support Manager.

(5) The Application Support Manager transfers the CCL's to the Operations Manager.

(6) Operations reviews the CCL's and then submits approved CCL's to Systems.

(7) Systems reviews the CCL's and copies the approved changes to production.

(8) The CCL's are then returned to the Application Support Manager to be filed for historical purposes.

§95.414. Database Security.

(a) The UCC database files reside on magnetic storage devices within an automated computer environment under a multi-level security. Access is restricted to production and batch processors. Application developers access to production files is controlled by request from the appropriate Application Support Manager (ASM).

(b) Backup Procedure. The UCC database is backed up incrementally on a nightly basis. The UCC database is backed up in total on a weekly basis. All backups are removed to off-site storage the day after they have been run. Off-site storage is rotated on a daily basis where the newest tapes are taken off site and tapes that are over one week old are returned back to the office for reuse.

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Subchapter E. EDI Documents

1 TAC §§95.440-95.450

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

§95.440. *Definitions.*

For the purpose of rules relating to the electronic data interchange of documents, terms shall have the meaning provided in this rule, unless the context otherwise requires.

(1) "EDI" means the electronic data interchange of UCC documents, UCC search requests and related responses.

(2) "EDI document" means a UCC document transmitted from a remitter to the filing officer by EDI techniques authorized under this rule.

§95.441. *EDI Authorized.*

(a) A remitter may be authorized for EDI upon the written authorization of the filing officer. The filing officer shall authorize a remitter to engage in EDI if:

(1) the remitter holds an account for the billing of fees by the filing officer,

(2) the remitter has entered into a trading partner agreement, in form and substance satisfactory to the filing officer, with the filing office, and

(3) the filing officer determines, after appropriate testing of transmissions in accordance with the filing officer's specifications, that the remitter is capable of transmitting EDI documents in a manner that permits the filing officer to receive, index, and retrieve the EDI documents.

(b) The filing officer may suspend or revoke the authorization when, in the filing officer's sole discretion, it is determined that a remitter's transmissions are incompatible with the filing officer's EDI system. A request to be authorized to transmit EDI documents shall be addressed to the filing officer at the address identified in

§95.104(a)(1) of this title (relating to Filing Office Identification). Upon receipt of a request for authorization, the filing officer shall provide the remitter with necessary information on the record layout of the transmission, including record length, format, network address for transmission, and other necessary specifications.

§95.442. *ANSI Standard Adopted.*

ANSI X12 transaction set 154, as adopted by the American National Standards Institute and in effect from time to time, is adopted in this state as the format for electronic transmission of UCC documents, although the filing officer shall, periodically and at the request of an authorized EDI remitter, identify which versions and releases of ANSI X12 154 are then in use by and acceptable to the filing office.

§95.443. *Standard Form and Applicable Fee.*

Notwithstanding the provisions of §95.108 of this title (relating to Requirements to Qualify for Standard Form Fee), an EDI document qualifies for the standard fee set forth in §95.111 of this title (relating to Filing Fees).

§95.444. *Implementation Guide.*

The filing office publishes an implementation guide that prescribes in further detail the use of ANSI X12 154 in the UCC filing system. The guide is available upon request made in writing to the filing office at its mailing address set forth in §95.104(a)(1) of this title (relating to Filing Office Identification).

(1) The guide identifies the version(s) or release(s) of ANSI X12 154 currently in use by the filing office.

(2) The guide identifies the types of UCC documents and related responses that can currently be transmitted through EDI.

(3) The guide prescribes the manner of transmission of all information contained in a UCC document and any other information required for the filing office to fulfill its responsibilities under the UCC and these rules, including identification of UCC documents, information necessary to collect fees, identification of debtors and secured parties, description of collateral and the authentication of UCC documents.

(4) The guide may be amended from time to time. Notice of amendments will be provided to each remitter authorized to transmit EDI documents to the filing office not less than 30 days prior to the effectiveness of the relevant amendment(s).

§95.445. *Authentication.*

(a) A segment of an EDI document is designated for transmission of the symbol adopted by the relevant debtor(s) or secured party(ies) with intent to authenticate the relevant UCC document pursuant to Section 1-201(39) of the UCC and as required by Section 9-402(1) of the UCC.

(b) The transmission of such a symbol on behalf of a debtor shall constitute a representation of the remitter and the relevant secured party(ies) that the relevant secured party(ies) has(ve) a writing signed by such debtor by which such debtor adopts the contents of the relevant segment as such symbol with the intent to authenticate the EDI document. The transmission of such a symbol on behalf of a secured party shall constitute a representation of the remitter that the remitter has a writing signed by such secured party by which such secured party adopts the contents of the relevant segment as such symbol with intent to authenticate the relevant EDI document.

§95.446. *Document Types.*

An EDI document shall be identified as to type by the transmission of the appropriate identifier required in the implementation guide

referred to in §95.444 of this title (relating to Implementation Guide). The filing officer, in responding to a request for a paper copy of an EDI document, shall print the full text of the relevant one of the following statements corresponding to the type of EDI document requested.

(1) For an original financing statement: "Financing Statement - This financing statement is presented to the filing officer for filing pursuant to the Uniform Commercial Code."

(2) For a statement of amendment financing statement: "Amendment - The financing statement bearing the file number shown on this document is hereby amended as follows:"

(3) For a statement of assignment of an interest in collateral: "Assignment - The secured party certifies that the assignee named in this document has been assigned some or all of the secured party's rights under the financing statement bearing the file number transmitted in this document."

(4) For a continuation statement: "Continuation - The original financing statement bearing the file number shown on this document is still effective."

(5) For a termination statement: "Termination - The secured party certifies that a security interest is no longer claimed by it under the financing statement bearing the file number shown on this document."

§95.447. *Identification of Secured Party.*

When an EDI document requires the name of a secured party, the name of a secured party of record, or the address of a secured party, the remitter shall transmit to the filing officer a secured party identification number assigned by the filing officer if such a number is assigned. The filing officer, in responding to a request for a paper copy of an EDI document, shall print the full name and address of the secured party corresponding to the identification number. A list of secured parties identified by the filing officer pursuant to this rule is available from the filing officer at the mailing address stated in §95.104(b) of this title (relating to Filing Office Identification).

§95.448. *Refusal of EDI Document.*

A record transmitted to the filing officer that is not machine-readable or does not contain the information required by the implementation guide referred to in §95.444 of this title (relating to Implementation Guide) in an acceptable format shall be refused. The filing officer shall provide regularly scheduled (not less frequently than daily) electronic notices to the relevant remitter containing identification of EDI documents refused and appropriate error codes or explanations for the refusal when possible. However, records that cannot be read because they are garbled or are in improperly structured data packets, or which are received from persons not authorized for EDI by the filing office will not receive a refusal response. Readable transmissions from authorized transmitters will generate electronic confirmation of acceptance or rejection.

§95.449. *Acceptance and Archives.*

Upon acceptance of an EDI document for filing, a report shall automatically be generated which shall contain all of the information related to the document including all information transmitted by the remitter for inclusion in the document as prescribed by the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). The information contained in the report shall promptly be rendered and stored in an archival medium. The filing officer shall provide regularly scheduled (not less frequently than daily) electronic notices to remitters of accepted EDI documents to confirm such acceptance and the creation of such archive.

§95.450. *EDI UCC Search Requests.*

(a) UCC search requests may be submitted electronically by persons authorized to submit EDI documents in the manner set forth in the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). Unless otherwise specified in said implementation guide, accepted requests will generate searches conducted under the same search criteria applicable to search requests not submitted electronically.

(b) Electronic search requests may be submitted only by persons who are authorized to transmit EDI documents pursuant to §95.441 of this title (relating to EDI Authorized) and who have entered into arrangements acceptable to the filing officer for the payment of search and copy fees.

(c) Responses to electronic search requests will be made available electronically as soon as practicable, in a manner to be specified in the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). Such responses may, for a time, be limited to a search report with copies of reported documents being made available by non-electronic means. Until such time as electronic responses are available in any form, responses to electronic search requests will be generated and transmitted in the same manner and by the same means as responses to non-electronic search requests.

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Subchapter F. Filing and Data Entry Procedures

1 TAC §§95.500-95.520

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

§95.500. *Policy Statement.*

This subchapter contains rules describing the filing procedures of the filing officer upon and after receipt of a UCC document. It is the policy of the filing officer to file promptly a document that conforms to these rules. Except as provided in these rules, data are transferred from UCC documents to the information management system exactly as the data are set forth in the document. Personnel who create reports in response to search requests type search criteria exactly as set forth

on the search request. No effort is made to detect or correct errors of any kind.

§95.501. Definitions.

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

(1) For the purpose of this subchapter, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

(2) For the purpose of this subchapter, "entity" means a legal person who is not an individual under §95.402 of this title (relating to Names of Debtors Who are Individuals).

§95.502. Document Indexing and Other Procedures before Archiving.

(a) Date and time stamp. The date and time of receipt are noted on the document (or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system) at the earliest possible time.

(b) Cash management. Transactions necessary to payment of the filing fee are performed.

(c) Document review. The filing office determines whether a ground exists to refuse the document under §95.302 of this title (relating to Grounds for Refusal of UCC Document).

(1) File stamp. If there is no ground for refusal of the document, the document is deemed filed and a unique identification number and the filing date is applied to the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

(2) Correspondence. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in §95.304 of this title (relating to Procedure Upon Refusal).

(d) Data entry. Data entry and indexing functions are performed as described in this subchapter and in Subchapter G of this chapter.

(e) Acknowledgment copy and other correspondence. If the filing is made in person or by means of an EDI transmission, confirmation of the filing is given to the remitter by delivering to the remitter an acknowledgment copy of the filed document provided by the remitter or transmitted to the remitter by EDI transmission by transmitting an identification known to the remitter of the UCC document filed as well as the unique identification number assigned to the document by the filing office and the date of filing. Acknowledgment copies of filings made by means other than personal delivery or EDI transmission are sent to the secured party (or the first secured party if there are more than one) named on the UCC document or to the remitter if the remitter so requests by regular mail or by overnight courier if the remitter provides a prepaid waybill or access to the remitter's account with the courier.

§95.503. Filing Date.

The filing date of a UCC document is the date the UCC document is received with the proper filing fee if the filing office is open to the public on that date or, if the filing office is not so open on that date, the filing date is the next date the filing office is so open, except that, in each case, UCC documents excluding electronically transmitted documents received after 5:00 PM CST shall be deemed received on

the following day. The filing officer may perform any duty relating to the document on the filing date or on a date after filing date.

§95.504. Filing Time.

The filing time of a UCC document is determined as provided in §95.106 of this title (relating to UCC Document Delivery).

§95.505. Lapse Date and Time.

A lapse date is calculated for each original financing statement (unless the debtor is designated as a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if timely continuation statement is filed. The lapse takes effect at midnight at the end of the lapse date.

§95.506. Errors of the Filing Officer.

The filing office may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction is made after the filing officer has issued a certification date that includes the filing date of a corrected document, the filing officer shall proceed as follows. An entry shall be made upon the record of the financing statement in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The notation shall be preserved for so long as the record is preserved in the UCC information management system.

§95.507. Data Entry of Names - Designated Fields.

Whenever a filing designates whether a name is a name of an individual or an entity and, if an individual, also designates the first, middle, last names, and suffix, the following rules apply.

(1) Entity names. Entity names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an entity name.

(2) Individual names. On a form that designates separate fields for first, middle, last names, and suffix the filing officer enters the names into the first, middle, last name, and suffix fields in the UCC information management system exactly as set forth on the form.

(3) Designated fields encouraged. The filing office encourages the use of forms that designate separate fields for individual and entity names and separate fields for first, middle, last names, and suffix. Such forms diminish the possibility of filing office error and help assure filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through EDI will be required to use designated name fields.

§95.508. Data Entry of Names - No Designated Fields.

Whenever a filing fails to designate whether a name is a name of an individual or an entity and, if an individual also designates the first, middle, last names, and suffix, the following rules shall apply.

(1) Identification of entities. When not set forth in a field designated for individual names, a name is treated as an entity name if it contains words or abbreviations that indicate entity status such as the following and similar words or abbreviations in foreign languages: association, church, college, company, co., corp., corporation, inc., limited, ltd., club, foundation, fund, L.L.C., limited liability company, institute, society, union, syndicate, GmBH, S.A. de C.V., limited partnership, L.P., limited liability partnership, L.L.P., trust, business

trust, co-op, cooperative and other designations established by statutes to indicate a statutory entity. In cases where entity or individual status is not designated by the filer and is not clear, the filing officer will use their own judgment.

(2) Identification of individuals. A name is entered as the name of an individual and not the name of an entity when the name is followed by a title substantially similar to one of the following titles, or the equivalent of one of the following titles in a foreign language: proprietor, sole proprietor, proprietorship, sole proprietorship, partner, general partner, president, vice president, secretary, M.D., O.D., D.D.S., attorney at law, Esq., accountant, CPA. In such cases, the title is not entered.

(3) DBA, AKA, FKA. Entity names are entered as separate debtors and names when separated by words or abbreviations such as "doing business as," "also known as," "formerly known as," "DBA," "AKA," or "FKA," "a division of," or "a subsidiary of." Such words and abbreviations are not entered. Additional filing fees for the additional debtor name(s) may be required.

(4) Individual and entity names on a single line. Where it is apparent that the name of an individual and the name of an entity are stated on a single line and not in a designated individual name field, the name of the individual and the name of the entity shall be entered as two separate debtors, one as an individual and one as an entity. Additional filing fees for the additional debtor name(s) may be required.

(5) Individual names. In the absence of designated separate fields for first, middle, last names, and suffix, the following data entry rules apply.

(A) Freestanding initials. An initial in the first position of the name is treated as a first name. An initial in the second position of the name is treated as a middle name.

(B) Combined initials and names. An initial and a name to which the initial apparently corresponds is entered into one name field only (e.g., "D. (David)" in the name "John D. (David) Rockefeller" is entered as "John" (first name); "D. (David)" (middle name); "Rockefeller" (last name)).

(C) Multiple individual names on a single line. Two personal names contained in a single line are entered as two, separate debtors (e.g., the debtor name "John and Mary Smith" is entered as two debtors: John Smith, and Mary Smith).

(D) One word names. A one word name is entered as a last name (e.g. "Cher" is treated as a last name).

(E) Nicknames. A name in parentheses or quotes will be considered a nickname and shall be entered as a separate debtor. Additional filing fees for the additional debtor name(s) may be required.

§95.509. Verification of Data Entry.

The filing officer uses the following procedures to verify the accuracy of data entry tasks.

(1) Double key entry is employed for data entered in the individual and entity fields.

(2) Visual inspection of data entry changes is employed for data in the following fields.

- (A) Document identification fields.
- (B) Document type fields.
- (C) Individual and entity fields.

(D) Address fields.

§95.510. Original Financing Statement.

A new record is opened in the UCC information management system for each original financing statement.

(1) The name and address of each debtor named on the financing statement is entered into the record of the financing statement.

(2) The name and address of each secured party named on the financing statement is entered into the record of the financing statement.

§95.511. Statement of Amendment of a Financing Statement.

(a) A record is created for the statement of amendment, linked to the record of the original financing statement by entry of identification of the original financing statement.

(b) The names and addresses of additional debtors and secured parties are entered into the UCC information management system.

§95.512. Statement of Assignment of Interest in Collateral.

(a) A record is created for the statement of assignment, linked to the record of the original financing statement by entry of identification of the original financing statement.

(b) Appropriate adjustments are made to the status of secured parties on the record of the financing statement. (See §95.408 of this title (relating to Statement of Assignment of Interest in Collateral)).

(c) Absence of full/partial designation. A statement of assignment of interest in collateral shall be treated as a statement of partial assignment if the form fails to contain a designation whether the assignment is a full or partial assignment of a secured party's rights under the financing statement.

§95.513. Continuation Statement.

(a) A record is created for the continuation statement, linked to the record of the original financing statement by entry of identification of the original financing statement.

(b) No adjustments are made to the status of secured party on the record of the financing statement. (See §95.409 of this title (relating to Continuation Statement)).

§95.514. Statement of Release of Collateral.

(a) A record is created for the statement of release, to the record of the original financing statement by entry of identification of the original financing statement.

(b) No adjustments are made to the status of secured parties on the record of the financing statement. (See §95.412 of this title (relating to Statement of Release of Collateral)).

§95.515. Termination Statement.

Appropriate adjustments are made to the status of secured parties on the record of the financing statement. (See §95.410 of this title (relating to Termination Statement)).

§95.516. Master Filings.

(a) The filing officer may accept for filing a single UCC document for the purpose of assigning or amending more than one financing statement. Master amendments may accomplish one or both of the following purposes: amendment to change secured party name; amendment to change secured party address.

(b) A master filing shall consist of a written document describing the requested assignment or amendment on a form

approved by the filing office, and a machine readable file furnished by the remitter and created to the filing officer's specifications containing appropriate indexing information. A copy of master filing specifications is available from the filing officer upon request made in writing to the filing office at its mailing address set forth in §95.104(b) of this title (relating to Filing Office Identification). Acceptance of a master filing is conditioned upon the determination of the filing officer in the filing officer's sole discretion.

§95.517. *Archives - General.*

Active filings are available by search of the debtor name or by request under a specific file number. Inactive records are available upon request by a specific file number only.

(1) Paper UCC documents.

(A) Storage. Documents are stored in expanding file pockets in sequential number in file boxes.

(B) Retention. Documents are stored on site for six months after receipt. Documents are transported to State Archives for a period of two years six months prior to destruction.

(2) Reductions.

(A) Storage. Paper documents are reduced to either microfilm or computer media after indexing.

(B) Retention. Microfilm and digital images are retained indefinitely.

(3) Database storage. The UCC Information Management system is backed up to magnetic tape every business day.

§95.518. *Archives - Data Retention.*

Data in the UCC information management system relating to financing statements that have lapsed or have been terminated are retained for at least twelve months from the date of lapse or termination. Such data will be maintained in the system for twelve months from the date of lapse or termination. Documents are purged from the UCC Information Management system and reduced to microfiche at least every six months and will thereafter be maintained in archives.

§95.519. *Archival Searches.*

Terminated or lapsed filings may only be searched by file number. Computer record data for purged documents may be retrieved from microfiche of purged records.

§95.520. *Notice of Bankruptcy.*

The filing officer takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, filings will lapse in the information management system as scheduled unless properly continued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter G. Search Requests and Reports

1 TAC §§95.601-95.605

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

§95.601. *Search Requests.*

Search requests shall contain the following information.

(1) Name searched. A search request should set forth the full legal name of a debtor or the name variant desired to be searched. The full name of an individual shall consist of a first, middle, and last name, followed by any suffix that may apply to the name. The full name of an entity shall consist of the name of the corporate body as stated on the articles of incorporation or other organic documents in the state or country of organization or the name variant desired to be searched. A search request will be processed using the name in the exact form it is submitted.

(2) Requesting party. The name and address of the person to whom the search report is to be sent.

(3) Fee. The minimum search fee as described in §95.111(c) of this title (relating to Filing Fees) should be enclosed.

§95.602. *Optional Information.*

A UCC search request may contain any of the following information.

(1) A request that copies of documents referred to in the report be included with the report. The request may limit the copies requested by limiting them to the city of the debtor, the date of filing or the identity of the secured party(ies) of record on the financing statements located by the related search.

(2) A request that the search of a debtor name be limited to debtors in a particular city. A report created by the filing officer in response to such a request shall contain the following statement: "A search limited to a particular city may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search."

(3) Instructions on the mode of delivery requested, if other than by ordinary mail, will be honored if the requested mode is made available by the filing office.

§95.603. *Rules Applied to Search Requests.*

Search results are created by applying standardized search logic to the name presented to the filing officer by the person requesting the search. Human judgment does not play a role in determining the results of the search. The following, and only the following rules are applied to conduct searches.

(1) There is no limit to the number of matches that may be returned in response to the search criteria.

(2) No distinction is made between upper and lower case letters.

(3) Punctuation marks are disregarded.

(4) Words and abbreviations that indicate the existence or nature of an entity are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

(5) The word "the" at the beginning of the search criteria is disregarded.

(6) After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of active debtors that, as modified, exactly match the name requested, as modified.

§95.604. Search Responses.

Reports created in response to a search request shall include the following.

(1) Filing officer. Identification of the filing officer and the certification of the filing officer required by the UCC.

(2) Report date. The date the report was generated.

(3) Name searched. Identification of the name searched.

(4) Certification date. The certification date applicable to the report; i.e., the date through the search is effective to reveal all relevant UCC documents filed on or prior to that date.

(5) Identification of original financing statements. Identification of each active original financing statement filed on or prior to the certification date corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

(6) History of financing statement. For each original financing statement on the report, a listing of UCC documents filed by the filing officer on or prior to the certification date that include identification of the original financing statement, with the identification number, and file date and time of the documents.

(7) Copies. Copies of all UCC documents revealed by the search and requested by the searcher.

(8) Certificates. A report created by the filing officer in response to a request shall contain the following statement: "My acceptance for filing and custody of these documents in no way confirms, denies, or implies validity, legal effect, or enforceability of the attached documents."

§95.605. Supplemental Responses.

(a) In addition to the report described in §95.604 of this title (relating to Search Responses), the filing office may send a report of supplemental responses, clearly labeled as supplemental, identifying the names of debtors and identification of original financing statements for which a debtor name is similar to the name requested to be searched. Upon receipt of supplemental search responses requestor may submit a follow-up request for specific supplemental filings.

(b) The filing office publishes a search methodology guide that prescribes in further detail the use of the supplemental search logic in the UCC filing system. The guide is available upon request made in writing to the filing office at its mailing address set forth in §95.104(b) of this title (relating to Filing Officer Identification).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter H. Other Notices of Liens

1 TAC §§95.700-95.706

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

§95.700. Policy Statement.

The purpose of rules in this subchapter is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC documents and are included on request with the reports described in §95.604 and §95.605 of this title (relating to Search Responses and Supplemental Responses).

§95.701. Notice of Federal Tax Lien.

(a) Filing. Notices of federal liens such as federal tax liens, environmental, and pension will be accepted for filing as defined in Chapter 14, Texas Property Code. Notices of federal liens are filed and indexed within the UCC filing system. Notices of federal liens such as notices of discharge, release, and refile are filed as though they were financing statement changes and must include identification of the original file number (as defined in §95.101(8) of this title (relating to Definitions)). A separate notice or certificate form is submitted for each federal lien. A change to a federal lien shall be refused if the document's identification of the original lien does not correspond to the identification number and filing date of a federal lien then active in the UCC information management system.

(1) Where to file. Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens are filed with the filing office pursuant to Chapter 14.002, Texas Property Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Chapter 14.005, Texas Property Code.

(3) Duration. The notice is effective until a certificate of release, nonattachment, discharge, or subordination is filed with the filing office pursuant to Chapter 14.004, Texas Property Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to Chapter 14.004, Texas Property Code and as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 14.004, Texas Property Code and as described in §§95.111-95.112 of this title (relating to General Provisions).

§95.702. *Notice of Utility Security Instrument.*

(a) Filing. Utility security instruments and notices of name change, merger or consolidation will be accepted for filing as defined in Chapter 35, Texas Business and Commerce Code. Utility security instruments are filed and indexed within the UCC filing system. Notices of name change, merger or consolidation are filed as though they were financing statement changes and must include identification of the original file number (as defined in §95.101(8) of this title (relating to Definitions)). A separate notice is submitted for each utility security instrument. A change to a utility security instrument shall be refused if the document's identification of the original filing does not correspond to the identification number and file date of a utility security instrument then active in the UCC information management system.

(1) Where to file. Utility security instruments, instruments supplementary or amendatory thereto, or a statement of name change, merger, or consolidation are filed with the filing office pursuant to Chapter 35, Texas Business and Commerce Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Chapter 35.05, Texas Business and Commerce Code.

(3) Duration. The notice is effective until the interest granted as security is released by the filing of a termination statement signed by the secured party, and no renewal, refile, or continuation statement shall be required to continue such effectiveness pursuant to Chapter 35.03, Texas Business and Commerce Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to Chapter 35.06, Texas Business and Commerce Code and as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 35.06, Texas Business and Commerce Code and as described in §§95.111-95.112 of this title (relating to General Provisions).

§95.703. *Notice of Restitution Lien.*

(a) Filing. Restitution liens will be accepted for filing as defined in Article 42.22, Texas Code of Criminal Procedure. Restitution liens are filed and indexed within the UCC filing system. A separate affidavit is submitted for each restitution lien.

(1) Where to file. Restitution liens are filed with the filing office pursuant to Article 42.22, Sec. 7, Texas Code of Criminal Procedure.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Article 42.22, Sec. 7, Texas Code of Criminal Procedure.

(3) Duration. The lien expires on the 10th anniversary of the date the lien was filed or on the date the defendant satisfies the judgment creating the lien, whichever occurs first pursuant to Article 42.22, Sec. 12, Texas Code of Criminal Procedure. The lien may be refiled before the date the lien expires and will expire on the 10th anniversary of the date the lien was refiled or that the defendant satisfies the judgment creating the lien, whichever occurs first.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §§95.111-95.112 of this title (relating to General Provisions).

§95.704. *Notice of Agricultural Chemical and Seed Liens.*

(a) Filing. Agricultural chemical and seed liens will be accepted for filing as defined in Chapter 128, Texas Agricultural Code. Agricultural chemical and seed liens are filed and indexed within the UCC filing system. A separate notice of claim of lien is submitted for each agricultural chemical and seed lien.

(1) Where to file. Agricultural chemical and seed liens are filed with the filing office pursuant to Chapter 128.016, Texas Agriculture Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to Chapter 128.016, Texas Agriculture Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to Chapter 128.011, Texas Agriculture Code. The lien may be terminated pursuant to Chapter 128.038, Texas Agriculture Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 128.031, Texas Agriculture Code and §§95.111-95.112 of this title (relating to General Provisions).

§95.705. *Notice of Liens for Animal Feed.*

(a) Filing. Animal feed liens will be accepted for filing as defined in Chapter 188, Texas Agricultural Code. Animal feed liens are filed and indexed within the UCC filing system. A separate notice of claim of lien is submitted for each animal feed lien.

(1) Where to file. Animal feed liens are filed with the filing office pursuant to Chapter 188.016, Texas Agriculture Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to Chapter 188.016, Texas Agriculture Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to Chapter 188.011, Texas Agriculture Code. The lien may be terminated pursuant to Chapter 188.038, Texas Agriculture Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 188.031, Texas Agriculture Code and §§95.111-95.112 of this title (relating to General Provisions).

§95.706. *Notice of Judicial Finding of Fact.*

(a) Filing. Notice of judicial finding of fact documents will be accepted for filing as defined in Subchapter J, Sections 51.901-51.905, Texas Government Code. Judicial finding of fact documents are filed and indexed within the UCC filing system. A separate affidavit is submitted for each judicial finding of fact.

(1) Where to file. Judicial findings of fact are filed with the filing office pursuant to Section 51.905, Texas Government Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Section 51.905, Texas Government Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §§95.111-95.112 of this title (relating to General Provisions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter I. Rulemaking Procedure

1 TAC §§95.800-95.803

The new sections are adopted under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 5. Fuel Quality

4 TAC §§5.1-5.5

The Texas Department of Agriculture (the department) adopts new §§5.1-5.5 concerning automotive fuel quality rating and monitoring, as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7681). Section 5.4 is adopted with changes. Sections 5.1-5.3 and 5.5 are adopted without changes and will not be republished. The new sections are adopted to implement an automotive fuel quality monitoring program authorized under Article 8614, Vernon's Texas Civil Statutes (1997) as amended by Senate Bill 665, 75th Legislature, 1997, and to ensure the proper labeling of gasoline.

Section 5.4 has been changed to clarify that records requested by the department are required to be submitted to the department. New §5.1 defines terms used in these regulations. New §5.2 specifies an expiration provision for Chapter 5. New §5.3 requires the automotive fuel rating of gasoline to be the same or higher than the automotive fuel rating posted on the dispenser and certified by the distributor or supplier. Also, §5.3 establishes testing methods, standards and specifications utilized in the determination of the automotive fuel rating. New §5.4 provides for submission of records to the department. New §5.5 establishes equipment requirements for distributors, suppliers and dealers of gasoline to aid the department in the inspection and investigation of automotive fuel ratings.

No public comments were received on the proposal.

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

§5.4. Records.

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

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 September 9, 1998.

TRD-9814310

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 29, 1998

Proposal publication date: July 31, 1998

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



TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 92. Interagency Coordination

Subchapter AA. Memoranda of Understanding

19 TAC §92.1001

The Texas Education Agency (TEA) adopts new §92.1001, concerning memorandum of understanding for coordinated services to children and youth, without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7691). Section 92.1001 provides for a memorandum of understanding (MOU) among various state agencies, including the TEA, to establish a system of community resource coordination groups. The intent of the MOU is to ensure coordination between agencies to serve children and youth. New 19 TAC §92.1001 adopts by reference the MOU adopted by the Texas Department of Protective and Regulatory Services in 40 TAC §736.701.

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

No comments were received on the proposed new section.

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

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 September 14, 1998.

TRD-9814491

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: October 5, 1998

Proposal publication date: July 31, 1998

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

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 221. Advanced Practice Nurses

22 TAC §221.7

The Board of Nurse Examiners adopts amendments to §221.7 concerning Advanced Practice Nurses (APN), New Graduates without changes as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8014). Therefore, the text will not be republished.

The amendment is adopted to require APNs to re-educate if they have not passed the certification examination within two years of graduation or within three attempts. This amendment

will cause the APN graduates to meet the same requirements for graduates of professional nursing programs who fail the initial licensure examination.

The adopted amendment will allow those applicants that have been unsuccessful to reapply for APN authorization after successfully completing an accredited advanced practice nurse program of study.

There were no comments received.

The amendments are proposed under the Nursing Practice Act, (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it and Article 4514, §8, which provides the Board of Nurse Examiners the authority and power to adopt rules for approval of a registered nurse to practice as an advanced practice nurse.

There are no other rules, codes, or statutes that will be affected by this proposal.

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 September 9, 1998.

TRD-9814241

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Effective date: September 29, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 305-6811

Part XIV. Texas Optometry Board

Chapter 277. Practice and Procedure

22 TAC §277.1

The Texas Optometry Board adopts an amendment to §277.1, without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7692) and will not be republished.

Section 277.1 is required in order to clarify language regarding the complaint form required under the Texas Optometry Act, Texas Civil Statutes, Article 4552 §4.06.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §4.06 and §2.14. The Texas Optometry Board interprets §4.06 as authorizing it to interpret the manner in which complaints are filed with the Board. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814445

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: October 1, 1998

Proposal publication date: July 31, 1998

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



Part XV. Texas State Board of Pharmacy

Chapter 283. Licensing Requirements for Pharmacists

22 TAC §283.6

The Texas State Board of Pharmacy adopts an amendment to §283.6, concerning preceptor training requirements, without changes to the proposed text as published in the July 3, 1998, *Texas Register* (23 TexReg 6824). The amendment changes the number of hours of preceptor training from six hours to three hours every three years to more closely match the number of required hours with the number of hours offered by CE providers.

No comments were received on the amendments as proposed.

This amendment is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes): §4 which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; §17(a)(3) which gives the Board the authority to establish requirements for practical training, including internship; §21(f) which requires an applicant for licensure by examination to obtain practical experience under conditions determined by the Board; and §21(g) which requires the Board to establish standards for internship and qualifications for preceptors.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

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 September 14, 1998.

TRD-9814470

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 4, 1998

Proposal publication date: July 3, 1998

For further information, please call: (512) 305-8028



22 TAC §283.9

The Texas State Board of Pharmacy adopts amendments to §283.9, concerning Fee Requirements for Licensure by Examination and Reciprocity, without change to the proposed

text as published in the July 3, 1998 issue of the *Texas Register* (23 TexReg 6825) and will not be republished.

This amendment outlines a new administrative fee required from an applicant to cover the cost of administering the Texas Pharmacy Jurisprudence examination. As background, the Texas Board has entered into an agreement with the National Association of Boards of Pharmacy (NABP) for the administration of the new MultiState Pharmacy Jurisprudence Examination (MPJE), beginning in November 1998. The MPJE, which replaces our current paper and pencil Texas Jurisprudence Examination, will be developed by NABP and administered by the Cogent Testing Network in a computer-based format.

No comments were received on the proposed text.

The amendments are adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §39, which specifies that the board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 1998.

TRD-9814471

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 4, 1998

Proposal publication date: July 3, 1998

For further information, please call: (512) 305-8028



Chapter 295. Pharmacists

22 TAC §295.15

The Texas State Board of Pharmacy adopts new §295.15, concerning the administration of immunizations or vaccinations by a pharmacist under written protocol of a physician, with changes to the text published in the July 3, 1998, *Texas Register* (23 TexReg 6826).

The new adopted section implements Senate Bill 786, as enacted by the 75th Texas Legislature and sets minimum standards: for pharmacist training; supervision by physicians issuing written protocols; the special provisions for administration of immunizations or vaccinations; drug availability, storage, transportation, and custody; notification of appropriate physicians; record keeping; and confidentiality for pharmacists engaged in the administration of immunizations and vaccinations under written protocol.

One comment was received from the Texas Nurses Association (TNA) making the following suggestions.

(1) TNA suggests §295.15(e)(3) and (5) be changed to limit the phrase "reasonably available" in health care facilities and other settings. TNA noted that in health care facilities, including nursing homes and hospitals, "reasonably available" should include those times when a licensed healthcare provider on staff, who is authorized to administer medication, is available to administer the immunization within 24 hours. They also noted that in other settings, the term "reasonably available"

should include times when a licensed healthcare provider, who is authorized to administer medication, is on-site and available to administer the immunization or vaccine without inconveniencing the patient or client. The Board disagrees with these comments since it is clear in the Texas Pharmacy Act that a pharmacist may administer immunizations and vaccinations in nursing homes and hospitals, locations where licensed healthcare providers are virtually always available. If the nursing home, hospital, or management for other settings wishes to limit such administration to licensed nurses, nurses should be tasked to administer the immunizations at the time of need. The Board feels that a delay in the administration of the immunization should not be necessary and that the language as proposed is reasonable to make immunizations and vaccinations more readily available to the public and to patients at high risk.

(2) TNA suggests the training requirements of §295.15(c)(1) should include six to eight hours of intensive experience in the actual administration of immunizations and vaccines in a supervised setting such as a public health clinic, immunization clinic, or the like. The Board believes current rule language adequately addresses the experiential training requirements for pharmacists since it requires hands-on training, meets current Center for Disease Control training guidelines, and requires evaluation and testing with a passing score.

(3) TNA suggests changes to the training requirements of §395.15(c)(1)(C) to clarify that physiology and patient assessment are included in the training. The Board concurs with this suggestion and modifies clauses (vii) and (viii) accordingly.

This new rule is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes): Section 4 which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and §17(a)(5), (y), (z), and (aa) which gives the Board the authority to regulate and establish minimum education, continuing education, and supervision standards for pharmacists who administer immunizations or vaccinations.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§295.15. Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician.

(a) Purpose. The purpose of this section is to provide standards for pharmacists engaged in the administration of immunizations or vaccinations as authorized in §§17(a), (y), (z), and (aa) of the Act.

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

(1) ACPE The American Council on Pharmaceutical Education.

(2) Act The Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, as amended.

(3) Administer The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(4) Antibody A protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.

(5) Antigen A substance "recognized" by the body as being foreign; it results in the production of specific antibodies directed against it.

(6) Board The Texas State Board of Pharmacy.

(7) Confidential record Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.

(8) Data communication device An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(9) Immunization The act of inducing antibody formation, thus leading to immunity.

(10) Medical Practice Act The Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, as amended.

(11) Vaccination Administration of any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.

(12) Vaccine A specially prepared antigen, which upon administration to a person will result in immunity.

(13) Written Protocol A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Medical Practice Act.

(A) A written protocol must contain, at a minimum, the following:

(i) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of immunizations or vaccinations;

(ii) a statement identifying the individual pharmacist authorized to administer immunizations or vaccinations as delegated by the physician;

(iii) a statement identifying the location(s) (i.e., address) at which the pharmacist may administer immunizations or vaccinations;

(iv) a statement identifying the immunizations or vaccinations that may be administered by the pharmacist;

(v) a statement identifying the activities the pharmacist shall follow in the course of administering immunizations or vaccinations, including procedures to follow in the case of reactions following administration; and

(vi) a statement that describes the content of, and the appropriate mechanisms for the pharmacist to report the administration of immunizations or vaccinations to the physician issuing the written protocol within the time frames specified in this section.

(B) A standard protocol may be used or the physician may develop an immunization or vaccination protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for the patient.

(c) Pharmacist certification requirements. Pharmacist who enter into a written protocol with a physician to administer immunizations or vaccinations shall:

(1) be certified to administer immunizations and vaccinations by the completion of a course provided by an ACPE approved provider which:

(A) requires documentation by the pharmacist of current certification in the American Heart Association's Basic Cardiac Life Support for Health-Care Providers or its equivalent;

(B) is an evidence-based course which:

(i) includes study material;

(ii) includes hands-on training in techniques for administering immunizations or vaccines; and

(iii) requires testing with a passing score; and

(C) meets current Center for Disease Control training guidelines and provides a minimum of 20 hours of instruction and experiential training in the following content areas:

(i) standards for pediatric, adolescent, and adult immunization practices;

(ii) basic immunology and vaccine protection;

(iii) vaccine-preventable diseases;

(iv) recommended immunization schedules (pediatric/adolescent/adult);

(v) vaccine storage and management;

(vi) informed consent;

(vii) physiology and techniques for vaccine administration;

(viii) pre and post-vaccine assessment and counseling;

(ix) immunization record management; and

(x) adverse events:

(I) identification and appropriate response; and

(II) documentation and reporting; and

(2) maintain documentation of:

(A) completion of the initial course specified in paragraph (1) of this subsection;

(B) 3 hours of continuing education every 2 years beginning January 1, 2001, which are designed to maintain competency in the disease states, drugs, and administration of immunizations or vaccinations; and

(C) current certification in the American Heart Association's Basic Cardiac Life Support for Health-Care Providers or its equivalent.

(d) Supervision. Pharmacists involved in the administration of immunizations or vaccinations shall be under the supervision of a physician. Physician supervision shall be considered adequate if the delegating physician:

(1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or

protocol and the services provided to a patient under the order or protocol;

(2) has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist;

(3) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;

(4) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Special Provisions. Pharmacists involved in the administration of immunizations or vaccinations under their license to practice pharmacy shall meet the following restrictions and requirements.

(1) Pharmacists may only administer immunizations or vaccinations pursuant to a written protocol from a physician authorizing the administration.

(2) Pharmacists may administer immunizations or vaccinations to a patient under 14 years of age only upon a referral from a physician who has an established physician-patient relationship with each patient.

(3) Pharmacists may administer immunizations or vaccinations under written protocol of a physician within a pharmacy or at any other location specifically identified in the written protocol. Such other location may not include where the patient resides, except for a licensed nursing home or hospital.

(4) The authority of a pharmacist to administer immunizations or vaccinations may not be delegated.

(5) Pharmacists may administer immunizations and vaccinations only when a licensed health-care provider authorized to administer the medication is not reasonably available to administer the medication. For the purpose of this section, "reasonably available" means those times when the licensed health-care provider is immediately available to administer the immunization or vaccine and is specifically tasked to do so.

(6) Under the provisions of the National Vaccine Injury Compensation Program (NVICP), the health-care provider under whose authority a covered vaccine is administered (i.e., the physician issuing the written protocol) must maintain certain information in the patient's permanent record. In order for the physician to comply with the provisions of the NVICP, the pharmacist shall provide the physician with the information specified in subsection (g) of this section.

(7) The pharmacist shall comply with all other state and federal requirements regarding immunizations or vaccinations.

(f) Drugs.

(1) Drugs administered by a pharmacist under the provisions of this section shall be in the legal possession of:

(A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or

(B) a physician who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination.

(2) Drugs shall be transported and stored at the proper temperatures indicated for each drug.

(3) Pharmacists while actively engaged in the administration of immunizations or vaccinations under written protocol, may have in their custody and control the drugs for immunization or vaccination that are identified in the written protocol and any other dangerous drugs listed in the written protocol to treat adverse reactions.

(4) After administering immunizations or vaccinations at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Notifications.

(1) A pharmacist engaged in the administration of immunizations or vaccinations shall provide notification of the administration to:

(A) the physician who issued the written protocol within 24 hours of administering the immunization or vaccination; and

(B) the primary care physician of the patient, as provided by the patient or patient's agent, within 14 days of administering the immunization or vaccination.

(2) The notifications required in paragraph 1 of this subsection shall include the:

(A) name and address of the patient;

(B) age of the patient if under 14 years of age;

(C) name of the patient's primary care physician as provided by the patient or patient's agent;

(D) name, manufacturer, and lot number of the vaccine administered;

(E) amount administered;

(F) date the vaccine was administered;

(G) site of the immunization or vaccination (e.g., right arm, left leg, right upper arm);

(H) route of administration of the immunization or vaccination (e.g., intramuscular, subcutaneous, by mouth); and

(I) name, address, and title of the person administering the immunization or vaccination.

(h) Records.

(1) Maintenance of records.

(A) Every record, including notifications, required to be made under this section shall be kept by the pharmacist administering the immunization or vaccination and by the pharmacy when in legal possession of the drugs administered. Such records shall be available for at least two years from the date of such record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Records, including notifications, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Records of administration under written protocol.

(A) Records of administration shall be maintained by the pharmacist administering immunizations or vaccinations. Such records shall include:

(i) all of the administration record requirements of subparagraph (B) of this paragraph; and

(ii) include the name and address of the pharmacy or physician in legal possession of the immunization or vaccination administered.

(B) A pharmacy, when responsible for drug accountability, shall maintain a record of administration of immunizations or vaccinations by a pharmacist. The records shall be kept and maintained by patient name. This record shall include:

(i) a copy of the written protocol under which the immunization or vaccination was administered and any patient-specific deviations from the protocol;

(ii) name and address of the patient;

(iii) age of the patient if under 14 years of age;

(iv) name of the patient's primary care physician as provided by the patient or patient's agent;

(v) name, manufacturer, and lot number of the vaccine administered;

(vi) amount administered;

(vii) date the vaccine was administered;

(viii) site of the immunization or vaccination (e.g., right arm, left leg, right upper arm);

(ix) route of administration of the immunization or vaccination (e.g., intramuscular, subcutaneous, by mouth); and

(xi) name, address, and title of the person administering the immunization or vaccination.

(3) Written protocol.

(A) A copy of the written protocol and any patient-specific deviations from the protocol shall be maintained in accordance with paragraph 2 of this subsection.

(B) A standard protocol may be used or the attending physician may develop an immunization/vaccination protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for the patient. The pharmacy that is in possession of the vaccines administered shall maintain a copy of any deviations from the standard protocol ordered by the physician.

(C) Written protocols, including standard protocols, any patient-specific deviations from a standard protocol, and any individual patient protocol, shall be reviewed by the physician and pharmacist at least annually and revised if necessary. Such review shall be documented in the records of the pharmacy that is in possession of the vaccines administered.

(i) Confidentiality.

(1) A pharmacist shall provide adequate security to prevent indiscriminate or unauthorized access to confidential records. If confidential health information is not transmitted directly between a pharmacy and a physician, but is transmitted through a data communication device, the confidential health information may not be accessed or maintained by the operator of the data communication device unless specifically authorized to obtain confidential information by this subsection.

(2) Confidential records are privileged and may be released only to:

(A) the patient or the patient's agent;

(B) practitioners and other pharmacists when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being;

(C) other persons, the board, or other state or federal agencies authorized by law to receive such information;

(D) a law enforcement agency engaged in investigation of suspected violations of the Controlled Substances Act or the Dangerous Drug Act;

(E) a person employed by any state agency which licenses a practitioner as defined in the Act if such person is engaged in the performance of the person's official duties; or

(F) an insurance carrier or other third party payer authorized by a patient to receive such information.

(3) This section shall not affect or alter the provisions relating to the confidentiality of the physician-patient communication as specified in the Medical Practice Act, §5.08.

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 September 14, 1998.

TRD-9814469

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 4, 1998

Proposal publication date: July 3, 1998

For further information, please call: (512) 305-8028



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Subchapter A. Control of Communicable Diseases

25 TAC §97.12, §97.13

The Texas Department of Health (department) adopts amendments to §97.12 and §97.13 concerning persons with certain communicable diseases at the time of death and mandatory testing of persons suspected of exposing certain other persons to reportable diseases, and workers' compensation issues relevant to postexposure management of emergency responders.

Sections 97.12 and 97.13 are adopted without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5570), and therefore the sections will not be republished.

The amendment to §97.12 adopts clarification that hospital administrators and clinical administrators are also responsible for affixing or causing to be affixed the toe tag. The amendment to §97.13 adopts modification of the "correctional officer" definition to include those employed by private and public entities other than counties and the Texas Department of Criminal Justice. The change will allow a larger group of correctional workers to obtain testing of the source where there is an occupational exposure to a communicable disease under procedures described in the rule and Health and Safety Code §81.050.

No comments were received on the proposal during the comment period.

The amendments are adopted under the Texas Health and Safety Code, §81.004 which allows the board to adopt rules necessary for the effective administration of Chapter 81 (Communicable Disease), §81.050 which requires the board to prescribe by rule the criteria that constitute exposure to reportable disease for purposes of notifying first responders, and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 September 11, 1998.

TRD-9814451

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: October 1, 1998

Proposal publication date: May 29, 1998

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



Part II. Texas Department of Mental Health and Mental Retardation

Chapter 412. Local Authority Responsibilities

Subchapter H. Standards and Quality Assurance for Mental Retardation Community Services and Supports

25 TAC §§412.353, 412.355-412.357, 412.359, 412.370, 412.371

The Texas Department of Mental Health and Mental Retardation (department) adopts 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 services and supports, with changes to the text as published in the July 3, 1998, *Texas Register* (23 TexReg 6838). Amendments to §§412.356, 412.357 and 412.359 are

adopted without changes to the proposed text and will not be republished.

The amendments adopt by reference as Exhibits A-G the books *Personal Outcome Measures* and *Outcome Measures for Early Childhood Intervention Services* from The Council on Quality and Leadership in Supports for People with Disabilities (The Council) and five related forms. The *Personal Outcome Measures* will replace The Council's 1993 book, *Outcome Based Performance Measures*, that currently is adopted by reference as Exhibit A. *Outcome Measures for Early Childhood Intervention Services* will be used by the assessment and external validation teams when determined appropriate for interviews of children as part of the Quality Assurance and Improvement System (QAIS). The amendments also will replace references in the sections to the *Outcome Based Performance Measures* with references to the *Personal Outcome Measures* and the *Outcome Measures for Early Childhood Intervention Services*. A definition of *Outcome Measures for Early Childhood Intervention Services* is added in §412.353.

The department will use the *Personal Outcome Measures* and the *Outcome Measures for Early Childhood Intervention Services* in place of the *Outcome Based Performance Measures* as the basis for QAIS. The *Personal Outcome Measures* are a revision of the *Outcome Based Performance Measures* and reflect the most up-to-date information collected by The Council regarding programs throughout the country for persons with disabilities, including mental retardation. The QAIS Guidance Team, a group composed of representatives from local mental retardation authorities (MRAs), private providers, and Central Office program staff, evaluated the *Personal Outcome Measures* and the *Outcome Measures for Early Childhood Intervention Services*. The team recommended the two documents as the most suitable for use by local MRAs and designated providers in the assessment of the quality, efficiency, and effectiveness of their organizations and the services and supports they provide to consumers either directly or by contracting with providers.

In §412.353, an extra "and" inadvertently was inserted into the proposed definition of *Outcome Measures for Early Childhood Intervention Services*; it has been deleted. Subparagraph (B) of the definition of the *Personal Outcome Measures* is revised to reference the role of a legally authorized representative in prioritizing the outcomes for a consumer. Grammatical corrections have been made to the definitions of "tardive dyskinesia" and "tuberculosis," with the substitution of "that" for "which." In §412.355, the word "state" is inserted before "fiscal year" to clarify that local authorities and designated providers are to conduct a self-assessment and develop an improvement plan during each state fiscal year. In §412.370, the copyright date of The Council's *Personal Outcome Measures* is corrected from 1998 to 1997, and the 1998 date is eliminated as superfluous following the title to the document in subsection (c). The date also is deleted in §412.371 for the same reason. In Exhibits C and D under the heading "attainment," the phrase "People choose personal goals" has been revised to read "People realize personal goals" consistent with the outcomes as published by The Council. Also, instruction sheets titled "Instructions For Completing Inter-Rater Reliability During EV" inadvertently were included with Exhibits C and F. The instructions are unrelated to the two forms and are deleted.

A public hearing was not held. Written comments were received from the following members of the public: the parent/guardian

of a state school resident, Garland; and the Parent Association for the Retarded of Texas (PART).

Two commenters noted that using The Council's *Personal Outcome Measures* and the *Outcome Measures for Early Childhood Intervention Services* as the basis for QAIS means that anyone who reads or has to implement this policy has to purchase a copy of both copyrighted documents at a cost of approximately \$70. The commenters stated that the department should not create programs that include such costs to persons or groups, and recommended that the department either obtain the permission of The Council to use the two documents or forego using them. The department agrees that \$70 for copies of both documents could be a significant expense to those consumers, family members, guardians, and other interested persons who wish to purchase copies as part of their review of QAIS and this subchapter. The only persons, however, who must have at least one copy of each document are local MRAs and designated providers who are required by this subchapter and their contract with the department to conduct a QAIS self-assessment. The implementation of QAIS in 1996 represented a significant departure from previous department policy regarding the evaluation of quality in community-based services and supports for individuals with mental retardation. Among the significant differences is the use of The Council's nationally-recognized, copyrighted system of outcome-based performance measures rather than creating an independent set of outcomes/standards. The broad-based guidance team that spent 18 months studying the issue in 1994-95 determined that The Council's outcome measures met its criteria for an outcome-based quality assurance and improvement system. The department has had a contract with The Council since the inception of QAIS in 1996 that grants the department the right to use the outcome measures.

Two commenters requested that "mental retardation" or "mentally retarded" be used instead of "developmental delay," "developmentally disabled," or "disabilities" in portions of the sections which describe The Council and its copyrighted products. The department responds that "mental retardation" is used in this subchapter to reference individuals who receive mental retardation services through the department or its contractors. The department further explains that The Council evaluates services and supports for persons with a wide range of disabilities including mental retardation, and that the use of terminology employed by The Council when addressing its copyrighted products is appropriate.

The two commenters recommended that the developmental level rather than the chronological age of a consumer being interviewed for QAIS should determine whether the interviewer uses the *Personal Outcome Measures* or the *Outcome Measures for Early Childhood Intervention Services*. The department responds that the *Outcome Measures for Early Childhood Intervention Services* are age specific and using developmental level as the determining factor is neither appropriate nor consistent with the intentions of The Council. The decision of which set of outcome measures to use will be left to the discretion of the interviewer following guidelines established by The Council.

The two commenters requested that "legally authorized representative" be defined and that the phrase "consumer and LAR" should be revised as "consumer and/or LAR" throughout the sections. The department responds that the term already is defined in the subchapter. It was not included in the proposed

amendments because the definition was neither revised nor renumbered with the addition of a new definition.

In the definition of "Personal Outcome Measures," the two commenters requested that "and/or legally authorized representative" be inserted after "people with disabilities" in subparagraph (B) so that the sentence reads "focusing on those priority outcomes that people with disabilities and/or legally authorized representatives indicate are most important to them." The department has revised the language to read "focusing on those priority outcomes that people with disabilities (or an LAR on behalf of a person with a disability) indicate are most important to them." The commenters objected to the use in subparagraph (C) of the phrase "consumers with different disabilities," suggesting that the phrase sounded too much like an advertisement for The Council's products and services. The department responds that the definition is a succinct and accurate description of The Council's products and services, and is appropriate for a rule which describes a department quality assurance and improvement initiative based on those products and services.

The two commenters requested that the term "planning team" be replaced with "interdisciplinary team" and that the statutory definition of IDT be used. The commenters also requested that "planning team" be changed to "IDT" throughout the policy. The department responds that "planning team" is a general term which accurately conveys the diversity of how consumers and their personal support networks (including LARs, family members, and friends) in different service settings approach the development of a service and support plan. The team, at the discretion of the consumer (or the LAR, if any) can be considered interdisciplinary, person-directed, person-centered, or futures-planning. The definition reflects the reality that the consumer (with the LAR, if any) can and should be in control of determining the types of services and supports that are needed and appropriate. The two commenters recommended that subparagraph (A) of the definition be revised to specify that family members and friends may serve on the team only with the consent of the consumer and/or LAR. The department responds that the definition already specifies that the members of the team are chosen by the consumer or the consumer's LAR, if any.

The amendments are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; §534.057 which requires the department to adopt rules relating to the provision of respite care; and §534.058 which requires the department to establish standards of care for services provided by local authorities and their subcontractors.

§412.353. Definitions.

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

(1)-(14) (No change.)

(15) Outcome Measures for Early Childhood Intervention Service – The Council's copyrighted system of quality improvement and measurement for all types of service and support program models to families of children with developmental delays and/or disabilities. Within QAIS, these outcomes are used instead of the *Personal Outcome Measures* as considered appropriate by the assessment team or external validation team when the individual being interviewed is a child.

(16) Personal Outcome Measures – The Council's copyrighted system of quality improvement and measurement that emphasizes responsiveness on the part of service organizations to the individual needs of that organization's consumers rather than traditional compliance with established standards. The system:

(A) focuses on outcomes for consumers and the organizational processes that contribute to those outcomes;

(B) is concise, focusing on those priority outcomes that people with disabilities (or an LAR on behalf of a person with a disability) indicate are most important to them; and

(C) can be used with all services and programs – residential, vocational, social, or residential – and for consumers with different disabilities.

(17) Planning team – The consumer, the LAR, if any, and those persons chosen by the consumer and LAR, if any, who assess the consumer's treatment, training, and service/support plan needs and make recommendations to the local MRA or designated provider for services which will enable the consumer to meet desired personal outcomes. Team members typically could include:

(A) family members or other persons who are actively involved in the life of the consumer;

(B) persons who are professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of consumers;

(C) persons who are directly involved in the delivery of mental retardation services to the consumer; and

(D) member(s) of the local MRA's public responsibility committee (PRC), if requested by the consumer with the ability to provide legally adequate consent or the LAR, if any, or the PRC in instances when the consumer does not have either the ability to provide legally adequate consent or an LAR.

(18) Polypharmacy – Simultaneous use by a consumer of more than one psychoactive medication from the same medication class, except for those periods of overlapping use when a consumer is changing from one drug to another.

(19) Provider –

(A) Any organization or entity which contracts with a local MRA to provide mental retardation services and supports; or

(B) that part of a local MRA directly providing mental retardation services and supports.

(20) Psychoactive medication – Any medication which is prescribed for the primary intent of improving cognition, affective state, and/or behavior.

(21) Quality Assurance and Improvement System (QAIS) – The framework by which local MRAs and designated providers measure the quality, efficiency, and effectiveness of their organizations and the services and supports they provide to consumers either directly or by contracting with providers. It is an outcome-oriented system that concentrates on measuring desired results and the processes used to obtain those results, as defined by the consumer. The system is based on The Council's *Personal Outcome Measures* and, when the individual being interviewed is a child, the *Outcome Measures for Early Childhood Intervention Services*. The system involves three stages:

(A) self-assessment;

(B) quality improvement plan; and

(C) external validation.

(22) Respite services – Services which assist both consumers and their families during times of crisis or other specific events. Designed to be of short duration, the services may vary from one day to a maximum of 30 consecutive calendar days per episode. Respite services may be provided either in the consumer's home or in a residence operated or contracted for by the local MRA.

(23) Restraint – The use of physical force or a mechanical device to involuntarily restrict the free movement of the whole or a portion of a consumer's body to control physical activity.

(24) Services and supports – Programs and assistance for consumers with mental retardation that may include a determination of mental retardation, planning team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(25) Tardive dyskinesia – A possible side effect of psychoactive medication characterized by involuntary and abnormal movements that are purposeless and stereotypical.

(26) The Council – The Council on Quality and Leadership in Supports for People with Disabilities, formerly The Accreditation Council, is a diversified quality enhancement organization with an international focus in the field of human services which: develops standards of quality; develops and disseminates materials; provides training, consultation, and technical assistance; and operates an accreditation program for organizations which serve people with disabilities.

(27) Tuberculosis – A disease spread through airborne particles containing tubercle bacilli that become established in the lungs and may spread throughout the body.

§412.355. *Self-assessment by Local MRAs and Designated Providers.*

(a) During every state fiscal year, each local MRA and designated provider will conduct a self-assessment with the subsequent development of a quality improvement plan as described in §412.358 of this title (relating to Quality Improvement Plan). These will be completed within 30 days following the anniversary date of the initial self-assessment and submitted to the department's Office of Quality Management. The self-assessment is based on The Council's *Personal Outcome Measures* and, as appropriate, the *Outcome Measures for Early Childhood Intervention Services*, which are adopted by reference as Exhibits A and B, respectively, in §412.370 of this title (relating to Exhibits). It is designed to evaluate two aspects of quality, which are:

(1) outcomes of services that contribute to the quality of life (outcome measures for people); and

(2) the organizational structure and processes that support quality services and supports (outcome measures for organizations).

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

§412.370. *Exhibits.*

(a) Documents adopted by reference in this subchapter include:

(1) Exhibit A – The Council's *Personal Outcome Measures* (1997);

(2) Exhibit B – *Outcome Measures for Early Childhood Intervention Services* (1995);

(3) Exhibit C – Outcomes for People Results Worksheet;

(4) Exhibit D – Outcomes for People Scoring Grid; and

(5) Exhibit E – Outcomes for Organizations Result Worksheet.

(6) Exhibit F – Outcomes For Families and Children Results Worksheet; and

(7) Exhibit G – Outcomes for Families and Children Scoring Grid.

(b) The QAIS Implementation Manual is referenced in this subchapter as Exhibit H.

(c) Copies of the *Personal Outcome Measures* and the *Outcome Measures for Early Childhood Intervention Services* listed in subsection (a)(1) and (2) of this section may be obtained by contacting The Council, 100 West Road, Suite 406, Towson, Maryland 21204. All other documents listed in subsections (a) and (b) of this section may be obtained by contacting the Office of Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box, 12668, Austin, Texas 78711-2668.

§412.371. *Training.*

(a) Training and other learning opportunities for all stakeholders of the local MRA or designated provider and for the members of the external validation teams are based on The Council's *Personal Outcome Measures*, *Outcome Measures for Early Childhood Intervention Services*, and other service quality improvement concepts.

(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 September 8, 1998.

TRD-9814153

Charles Cooper
Chairman

Texas Department of Mental Health and Mental Retardation

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For further information, please call: (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter B. Insurance Advertising, Certain Trade Practices and Solicitation

28 TAC §21.114

The Texas Department of Insurance adopts a clarifying and conforming amendment to §21.114, concerning rules pertaining specifically to life insurance advertising, with changes to the proposal as published in the March 13, 1998 issue of the *Texas Register* (23 TexReg 2715). The adoption does not include the proposed amendment to §21.102 that was part of the published proposal, for reasons set out in this notice.

The adopted amendment is necessary for clarification and conformity with provisions and requirements of Chapter 21, Subchapter N, relating to life insurance illustrations, adoption of which is published elsewhere in this issue of the *Texas Register* as §§21.2201-21.2214. The adopted amendment results in a more clear life insurance advertising rule which contains provisions for illustration of dividends that is consistent with the requirements for life illustrations generally set out in Subchapter N.

The amendment to §21.114 provides that if dividends are illustrated, the illustration must conform to the requirements of Chapter 21, Subchapter N, relating to life insurance illustrations.

Two comments questioned whether any benefit would result from including illustration supporting software in the definition of an "advertisement" in §21.102(1)(B). Each comment contained statements suggesting the amendment not be adopted, and one directly stated there is no need for the change. That same comment also indicated that if the proposed amendment were read literally, the actual binary codes in the software would have to comply with the advertising regulation. The department has reviewed and evaluated the proposed amendment in light of these comments, and has withdrawn the proposed amendment as a result. The department did not intend the provision to be read to require the binary code of software program itself to comply with the advertising regulation. The purpose of the amendment was to help assure sufficient oversight review by an insurer of tools utilized by agents in the development, depiction and use of illustrations to assure compliance with Chapter 21, Subchapter N, relating to life insurance illustrations. Since the department believes that clarifying and elucidatory changes to the life insurance illustration sections that result from comments received during the comment period and during the hearing will address department concerns, the proposed amendment to §21.102(1)(B) is withdrawn.

One comment recommended elimination of the amendment to §21.114(6)(B), on the bases that an illustration is not an advertisement in the customary meaning of that word, and that the very specific illustration rules for life insurance would preempt the more general advertising rules. The department disagrees in part with the comments, and for that reason retains the amendment to §21.114(6)(B) in the adoption. The department considers the amendment necessary and the most appropriate method of providing notice in its regulatory framework that if dividends are illustrated, the illustration must conform to the provisions of Chapter 21, Subchapter N. Prior to adoption of Chapter 21, Subchapter N, (relating to Life Insurance Illustrations) elsewhere in this issue of the *Texas Register* as §§21.2201-21.2214, provisions in §21.114(6) specifically addressed advertising including dividends. Subparagraph (B) specifically set out minimum standards for dividends which were intended to be illustrated. Some provisions previously set out in that subparagraph have been deleted and replaced with an express cross reference to those provisions of the illustration rules for life insurance policies which specifically address dividends. For these reasons, no change is made to the amendment as proposed and published.

Comments generally against the proposed amendment to §21.102(1)(B) were received from Northwestern Mutual Life Insurance Company and the Principal Financial Group. Comments generally against the proposed amendment to §21.114(6)(B) were received from Northwestern Mutual Life Insurance Company.

The amendment is adopted pursuant to the Insurance Code, Article 21.21, §13. Article 21.21, §13, provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices.

§21.114. *Rules Pertaining Specifically to Life Insurance Advertising*
(1)-(5) (No change.)

(6) Dividends.

(A) (No change.)

(B) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the illustration must conform to the requirements of Subchapter N of Chapter 21 of this title, relating to life insurance illustrations.

(C)-(D) (No change.)

(7)-(9) (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 September 9, 1998.

TRD-9814328

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



Subchapter N. Life Insurance Illustrations

28 TAC §§21.2201-21.2214

The Texas Department of Insurance adopts new subchapter N, §§21.2201-21.2214, concerning life insurance illustrations, with changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 Tex.Reg. 2716).

This new subchapter is necessary to protect prospective insureds and insurers from the deception, abuse and unfair trade practices that have accompanied the proliferation of illustrations in the life insurance marketplace in recent years. This subchapter, as adopted, differs in some respects from the proposed published version based on further study generated by comments received. Specific changes and reasoned justification for the subchapter and agency responses to comments are addressed in Section 4, Summary of Comments and Agency Response.

This new subchapter shall apply to policies sold on or after July 1, 2000. Section 21.2201 sets out the purpose of the subchapter; §21.2202 states the statutory authority upon which the new sections are based; §21.2203 sets out the applicability and scope of the subchapter and identifies those contracts that are exempt from the subchapter; §21.2204 contains definitions of essential terms used in the proposed sections; §21.2205 provides for the identification and notice to the commissioner of life insurance policies which are to be marketed with or without an illustration and the circumstances requiring delivery of illustrations or quotations to policy owners; §21.2206 establishes

general rules and prohibitions, including disclosure, format and prohibitions that apply to all illustrations; §21.2207 provides for standards for basic illustrations (Basic); §21.2208 sets out standards for supplemental illustrations (Supplemental); §21.2209 provides for the delivery of the basic illustration and for certain records to be obtained and retained by insurers; §21.2210 requires an annual report and certain notice concerning illustrations to be delivered to policyholders; §21.2211 requires the appointment of an illustration actuary and an annual certification to be made to the department by the insurer's illustration actuary; §21.2212 provides for penalties for violation of the sections; §21.2213 contains a separability clause; and §21.2214 establishes an effective date.

With several notable exceptions, the proposed new subchapter is based upon and incorporates nearly all of the Life Insurance Illustrations Model Regulation (Model) adopted by the National Association of Insurance Commissioners (NAIC) on December 6, 1995. Since publication of this proposed new subchapter on March 13, 1998, the department has received approximately 70 written and oral comments from insurers, agents, consumer groups and the Office of Public Insurance Counsel (OPIC). Most insurer and agent commenters urged the adoption of the NAIC Model without deviation and were critical of the changes made, arguing generally that they were unnecessary, would cause consumer confusion and increase costs. The changes most frequently objected to were: the substance and placement of disclosures; the prohibition against increases in the scale of non-guaranteed interest; the requirement that guaranteed values be shown in a Supplemental illustration and the omission of the consumer acknowledgment and signature requirement.

OPIC and Consumers Union (CU) oppose the adoption of the subchapter primarily on the basis that it permits the projection of current values into the future, a practice they believe to be inherently misleading to consumers and one which they contend can not be disclaimed. Despite their overall objection, these two groups do support the changes made to the Model.

A summary of these and other comments and the department's response follow on a section by section basis, unless otherwise indicated. For clarity of analysis, the discussion of subsections within a section may not follow strict numerical order.

§21.2204 Definitions

Basic Illustration

One commenter pointed out that the definition of illustration omits the NAIC Model language "used in the sale of a life insurance policy" and thus the reach of the regulation could extend beyond the sales scenario.

Agency Response: The department agrees. The omission was inadvertent. The omitted language has been added to the definition of illustration which now reads: "Illustration - a presentation or depiction used in the solicitation or sale of a life insurance policy that includes. . . ."

Illustration

The Model defined illustration as "a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is" either a Basic, Supplemental, or In-force illustration. The qualifying language that an illustration only could be either a basic, supplemental or In-force illustration was intentionally deleted from the proposed rule to eliminate the possibility that an illustration which did not com-

ply with the requirements for those types of illustrations could escape regulation altogether.

One insurer strongly supported this change, observing that it "closes a gaping hole in the definition of illustration." Two other insurers opposed the change arguing that it either makes the definition too broad or may create a loophole.

Agency Response: The department disagrees that this change either extends the definition beyond the intended scope of the Model or creates a loophole. This change instead closes a serious gap found in the Model that might significantly diminish the department's ability to enforce the subchapter.

§21.2206(1)(T) Disclaimer

Placement

The proposed subchapter requires a disclaimer to be set out in the narrative summary of a basic illustration and in close conjunction to any depiction of non-guaranteed elements which would include the ledger pages of either a Basic or Supplemental illustration or both. A number of commenters argued that the Model requires a disclaimer to be set out only in the narrative summary of a Basic illustration and that to require disclaimers anywhere else would be unnecessary. In support of this position, several commenters pointed out that a Supplemental illustration is required to make explicit reference to a Basic illustration for important information which includes the disclaimer. Many also noted that staff's "departure" from the Model in this regard would lengthen illustrations, increase programming costs and cause consumer misunderstanding. One commenter suggested that the phrase "in close conjunction to" implies that a disclaimer is required on every page and that given the length of the disclaimer and dearth of available space, the disclaimer might be reduced to very small type face and thus be less readable.

Agency Response: The department disagrees that the proposal departs from or is inconsistent with the Model regarding the placement of disclaimers. Contrary to the assertions of several commenters, the Model requires a disclaimer not only in the narrative summary (§7(B)(5)), but also requires that a disclaimer accompany "any illustration of non-guaranteed elements" in a Basic illustration (§7(A)(12)). This disclaimer or "statement," as it is called in the Model, also is required for a Supplemental illustration: "A supplemental illustration may be provided so long as. . . it contains the same statement required of a Basic illustration that non-guaranteed elements are not guaranteed. . . ." (§8(A)(3)).¹

Nor does the staff proposal necessarily depart from the Model regarding disclaimer placement or repetition within an illustration. While exposure draft versions of the proposal required that a disclaimer appear on every page showing non-guaranteed values, the published version struck this requirement, substituting the language "conspicuously and in close conjunction to any depiction of non-guaranteed elements." This language was drawn directly from current TDI advertising rules. Section 21.103, Required Form and Content of Advertisements provides in part: "All information required to be disclosed by these sections will be set out conspicuously and in close conjunction with the statements to which the information relates. . . ." Since non-guaranteed elements might appear at several different places within a Basic or Supplemental illustration, the Texas proposal, consistent with current advertising rules, could require, depending on the length of the illustration, multiple disclaimers.

The department believes that this same result is required by the Model. Unlike "close and conspicuous," which is an established legal standard in the law of deception, the word "accompany" used in the Model lacks a fixed legal meaning. Nonetheless, it can be reasonably interpreted as an equivalent requirement. The ordinary dictionary meaning of the word is "to be with" or "to go with" and implies equal status. Adding further support to this interpretation is the fact that the Model requires that the disclaimer accompany "any illustration of non-guaranteed elements." The choice of the words "any illustration" is inconsistent with an interpretation that a single disclaimer is sufficient regardless of the length of the illustration or the number of places that non-guaranteed values might be illustrated. If the drafters had intended this result they could have simply required that a "Basic or Supplemental illustration be accompanied by a disclaimer."

The department therefore disagrees with the position taken by several commenters that the current proposal differs from the Model regarding the placement of disclaimers. What the department's proposal does is simply to clarify what the Model already requires. For this reason the department also rejects the arguments that implementation of the Texas proposal will either increase costs or the length of illustrations over and above that which would occur if the Model's exact language were adopted in this regard.

Apart from the Model, there are also compelling legal reasons to require proximity: the law of deception as incorporated into the Insurance Code, Article 21.21 et seq., the Texas Business and Commerce Code, §17.42 et seq., the department's advertising regulations and case law strongly suggest this standard. The fundamental legal difficulty posed by the projection of future policy values based on current assumptions is that without adequate disclaimer many prospective insureds will view the illustration as a representation of future policy performance, rather than as a device whose avowed purpose is to merely show how a particular policy works.

Since it is a near actuarial certainty that what is shown will not in fact occur, (actual results will be worse or better than shown)² an illustration, standing alone, has the tendency or capacity to deceive. Therefore, to avoid being deceptive, an illustration based on non-guaranteed assumptions must be effectively disclaimed; it must lose its character as a claim of future policy performance.

The department is not convinced by OPIC's and Consumers Union's legal analysis that an illustration based on non-guaranteed values is inherently deceptive, and therefore can never be effectively disclaimed. Nor can the department accept the argument put forward by several industry commenters that a single disclaimer placed within the narrative summary of a Basic illustration is effective³, and therefore legally sufficient, regardless of the length of the Basic illustration or the fact that it may be accompanied by an even longer Supplemental illustration.

For the above stated reasons, the department retains the proximity standard as published.

§21.2206(1)(T) Disclaimer

Substance Generally

The published proposal combines elements found in the Model's narrative and ledger disclaimers into one unified disclaimer statement. In addition to that which is required by the Model,

the proposal calls for identification of non-guaranteed values; the assumptions upon which non-guaranteed values are based and the factors which will affect future policy performance. Most industry groups expressed discomfort or opposition to these changes, particularly as they relate to the disclosure of assumptions and the factors which would affect future policy performance. Several commenters expressed the generalized opinion that any departure from the Model would increase costs, lengthen illustrations and cause consumer confusion. OPIC and Consumers Union supported these changes.

Substance - Identification of Non-Guaranteed Values

One commenter expressly objected to this provision, reasoning that labeling non-guaranteed values and benefits in the column title and footnotes sufficiently identifies those elements which are non-guaranteed.

Agency Response: The Model at Section 7(A)(12) does not expressly provide that the non-guaranteed values which form the subject matter of the required disclaimer be identified or located. This omission was probably inadvertent and the requirement can be implied from the language used. Further, most illustrations that the department has reviewed clearly connect the disclaimer with those values which are not guaranteed, e.g. "The values shown in current and assumed columns are not guaranteed, so if . . ." The proposal simply makes explicit that which is implicitly required by the Model. Given the fact that most companies currently make this important connection, the department does not believe that either the cost or length of illustrations would be significantly affected by this change in language. Obviously, if the non-guaranteed values are appropriately identified in the column headings, the proposed disclaimer does not require further identification.

Substance - Disclosure of Assumptions

Numerous insurers objected to the disclosure of the assumptions upon which non-guaranteed values are based. Several commented that this particular requirement would result in the disclosure of proprietary pricing and dividend calculation assumptions and would be of little help, if not confusing, to consumers. Some commenters complained that the requirement was insufficiently precise and questioned whether the department actually intended to require disclosure of pricing assumptions and other proprietary information. Others observed that disclosure of the assumptions, in addition to being confusing to consumers, would increase the length and costs of illustrations. Two commenters indicated that it was unfair for the department to cite the unpublished opinion in *Casteel v. Crown Life* in support of its position on this change.

Agency Response: It was not the intention of staff in calling for "identification of the assumptions upon which the non-guaranteed values are based" to require disclosure of confidential pricing or any other proprietary information. What is called for is simply the disclosure of what must occur in order for the non-guaranteed values shown to be achievable. To the extent the proposed language could be misinterpreted to require disclosure of proprietary information, the language has been amended to make clear that what is required to be disclosed are the assumptions underlying the illustration, to wit: "identify the assumptions upon which the illustration is based."

The Model, in its narrative summary, Section 7(B)(5), imposes a similar disclosure requirement albeit in actuarial language that

in the opinion of the department is unintelligible to the average reader: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than shown."

Because the operative words "currently illustrated nonguaranteed elements" are of uncertain or unknown meaning to the intended audience, insurance buyers, the department believes that the disclaimer fails to communicate effectively what precisely it is that is unlikely to remain unchanged for the years shown. The "what" here is of material importance to a proper understanding on the part of the prospective insured that the illustration is not in fact a claim of future policy performance.

The Model's standard for the ledger disclaimer, Section 7(A)(12), is equally opaque; it requires only a statement indicating that: "the assumptions on which they (nonguaranteed values) are based are subject to change by the insurer."

The department's required disclaimer supplies the omitted information necessary to make the statement understandable. Under the department's formulation, acceptable disclaimer language for a universal life policy might read: "The values shown in the current and mid-point columns are not guaranteed and assume that our current scale for interest credited, cost of insurance and expense charges will remain unchanged for the years shown. This is not likely to occur and actual results may be more or less favorable. Future credits for interest and deductions for mortality and expenses can vary at the company's discretion depending upon factors such as death claims, investment earnings and overhead costs." The disclaimer is legally effective because it explains precisely why the illustration should not be taken to be a claim of future policy performance.

Several commenters complained that staff unfairly relied upon the unpublished Texas Third Court of Appeals opinion in *Casteel v. Crown Life*, a vanishing premium case. While staff did make reference to the *Crown Life* case in some of the materials distributed in connection with various exposure drafts, the reference was to the trial court's charge to the jury, not to the unpublished appellate opinion. In defining for the jury the meaning of "false, misleading, unfair or deceptive act or practice," the court incorporated a number of the department's rules, including, significantly, §21.114(6) (c) regarding an illustration which shows dividends being used to pay policy costs.

The cited rule provides that an illustration can not state or imply that future dividends may be sufficient to pay future policy costs unless "it clearly and precisely explains. . . the conditions required for that to occur." In other words, the rule requires disclosure of the assumptions underlying the illustration. The purpose of the citation to *Crown Life* was to underscore the point that some of the department's current rules require disclosure of the assumptions and that this concept was simply carried forward in the illustration rule.

Substance - Disclosure of Factors Which Will Affect Future Policy Performance.

In addition to identifying the assumptions underlying the illustration of nonguaranteed values, the staff proposal calls for disclosure that these assumptions can change at the discretion of the insurer and requires identification of the factors which will affect future policy performance.

A number of insurers expressed concern with the formulation of the requirement and suggested that the language be made conditional, to wit: "identify generally the factors which may affect future policy performance, such as. . ." They grounded their concern on the observation that one or more factors identified might not ultimately affect future policy performance or that a relevant factor might be omitted, giving rise to potential liability for misrepresentation in either case.

Still other commenters questioned the utility or benefit of identifying performance factors, arguing that such disclosure would not improve consumer understanding, and might very well detract from it. One large insurer, while agreeing that consumers should be told that nonguaranteed elements may be changed by the insurer, nonetheless articulated the view that weighing the factors affecting future policy performance was a "varying and complex process" and might not be understood by a person within the segment of the public to which the illustration is directed. Finally, several insurers and agents expressed the opinion that the proposal would increase not only the length of illustrations, but compliance costs.

Agency Response: The department agrees that the disclaimer regarding the factors affecting future policy performance should be made conditional for the reasons advanced by those commenters who objected to it on that basis and has amended the proposal accordingly.

The department rejects the assertion made by some commenters that disclosing the factors which may affect future policy performance would not improve consumer understanding or worse, would detract from it. On the contrary, the department believes that the requirement is essential to a full understanding that what is presented is not to be understood as a claim or representation of future policy performance. Equally important, given the fact that the life products which are subject to this regulation are to one degree or another sensitive to swings in the financial markets, requiring disclosure of the factors which may affect future policy performance not only materially strengthens the disclaimer but significantly advances one of the stated goals of the Model which is to enhance consumer understanding.

The proposed section must be viewed within the context of what is actually occurring in the life insurance marketplace today. Although life insurance continues to be marketed as a device to provide security to a surviving spouse and family in the event of the premature death of the insured, increasingly life insurance products also are being sold as a vehicle by which to achieve a financial goal. The investment and financial planning objectives are many and varied, but typically include providing for a supplemental retirement income, accumulation of cash to pay for future expenses or acquisitions, a college education or vacation home, for example, or the planned elimination of premium payments at a future date in order to increase future discretionary income. In this context the illustration is an essential sales tool, since communicating how these financial goals could be achieved would be impossible without it. Illustrations that are used for this purpose are commonly referred to as "concept illustrations."

Although concept illustrations serve a useful and necessary purpose, they have spawned much litigation in recent years. Due to sharp decreases in market interest rates, many concepts illustrated in the 1980's and early 1990's simply did not materialize as shown.

While the steady decline in interest rates was unquestionably a mediate cause to the subsequent explosion in litigation over illustrations, in many cases a more immediate or producing cause was the fact that the illustrations failed to effectively communicate that the concepts presented were dependent on non-guaranteed values which were subject or sensitive to market volatility and other adverse changes in company experience such as mortality and expenses. The insured, in order to properly evaluate any particular concept illustration, must be made aware of the connection between these factors and the risk of non-performance.

To suggest, as some commenters have, that it would be unhelpful, meaningless or confusing to disclose to consumers the connection between future policy performance and the factors which could adversely affect that performance defies common sense. That the Model does not insist on this Basic disclosure is equally unpersuasive. The department believes that in order for an illustration to lose its character as a representation of future policy performance and therefore not be considered deceptive, the disclaimer must effectively communicate volatility, and in order to accomplish this objective it must identify the factors which may affect future policy performance.

§21.2206(1)(N) and (P) Guaranteed Values in Supplemental

The Model may permit⁴ a Supplemental illustration to present policy costs and benefits based exclusively on non-guaranteed values so long as the Supplemental makes reference to the Basic illustration "for guaranteed elements and other important information." The proposed section as published departs from the Model in this regard and requires a Supplemental illustration also to depict values based on guaranteed elements. In support of this change staff felt that the omission of guaranteed values was inconsistent with current formulations of the law of deception as incorporated into the Insurance Code, Article 21.21 et seq., the Business and Commerce Code, §17.42 et seq., the department's advertising rules and Texas case law.

Specifically, staff believed that given the length of many Supplemental illustrations it had reviewed (one was over 45 pages), the guaranteed values could easily be rendered obscure despite the Model's requirement that the Supplemental must make reference to the Basic regarding guaranteed values. Of equal concern was the fact that if guaranteed values were not shown in the Supplemental, the Supplemental would wholly fail to communicate volatility, which as discussed above, is essential to effective disclaimer. This problem is further compounded by the fact that most concepts are shown in the Supplemental illustration rather than the Basic.⁵ In those instances, showing volatility in the Basic is not helpful, because the Basic does not reflect the concept which motivates the decision to purchase. Thus, in those cases, volatility is effectively not shown at all.

Of the numerous comments received on this section, only two expressed support for the change from the Model, CU and OPIC. In their opinion it was important to show guaranteed values in the Supplemental because their inclusion demonstrated a worst case scenario thus demonstrating volatility of the non-guaranteed elements.

Several commenters, while expressing conditional agreement that some changes were needed either to ensure that volatility was shown or that guaranteed values not be rendered obscure, nonetheless believed staff's solution to be unduly burdensome and expensive, and suggested several alternative solutions.

Among the alternatives put forth, several suggested that in order to prevent obscuring guaranteed values, the Basic should precede the Supplemental. Another offered that volatility could be effectively shown without reducing "all" the non-guaranteed elements and suggested demonstrating volatility solely on the basis of a reduced interest or dividend scale since credited interest probably contributes more to volatility than other elements. Yet another suggested that exemptions be made for illustrations based on concepts involving split-dollar and other employee benefit plans, since employer involvement minimizes consumer risk and such illustrations are already lengthy and complex. Adding guaranteed values, it was argued, would not only magnify this existing problem, but might be difficult if not impossible to successfully implement.

Those commenters expressing opposition to requiring the inclusion of guaranteed values argued that the change: was not necessary to bring the Model in conformity with state law because it neither renders guarantees obscure nor fails to provide for volatility; would duplicate that which is required in the Basic and therefore is redundant and unnecessary; was not needed if the Basic shows a concept; would increase the length and complexity of illustrations to such a degree that any perceived advantage would be lost to the reader; would require major reprogramming of existing software and the marginal benefits gained would not outweigh the costs; and would render Supplemental illustrations which demonstrate a concept useless because the concept would rapidly consume the guaranteed values or could not be shown at all since some concepts will not work under a guaranteed-only scenario.

Several commenters expressed the opinion that the adoption of the Model would not conflict with existing rules, because under normal rules of statutory construction, the specific preempts the general and thus adoption of the Model would effectively repeal the department's advertising rules to the extent they conflict with the Model. Two commenters were of the opinion that other states which have adopted the Model have found no conflict with their advertising rules requiring equal prominence or prohibiting obscuring guarantees, and that therefore staff's legal analysis is flawed. One insurer observed that the department's "current advertising regulations add nothing to an illustration's compliance, fairness or accuracy that is not accomplished more thoroughly and specifically and rigorously" by the Model and recommended that the department's existing rules be modified so as not to apply to an illustration meeting the requirements of the Model.

After giving careful consideration to numerous written comments received on this section, staff proposed certain modifications which it believed would afford greater flexibility, reduce costs, facilitate industry compliance and provide a transition period while still maintaining an adequate level of disclosure regarding volatility. It distributed those changes just prior to the hearing in a handout entitled "Proposed Concept Illustration Amendment." Several participants at the hearing commented on the modification and the Commissioner extended by 30 days the time for written comments on the subchapter, including modifications made to the requirement of illustrating guaranteed values in the Supplemental.

Staff was persuaded that while some insurers currently have the computer and software capacity and staff resources to incorporate guarantees into a Supplemental illustration by the effective date of the rule, many do not and therefore some transitional period was necessary prior to full implementation

of this section. Some insurers indicated that although they could not demonstrate volatility by reducing all elements to a guaranteed level, they did have the current ability to reduce either the dividend or credited interest rate scale to effect this purpose. Still others, because of "year 2000" (Y2K) problems, antiquated hardware or software platforms or other reasons indicated that they had no near-term ability to demonstrate volatility in a personalized illustration, but could do so on a hypothetical basis using a form illustration or table.

Recognizing the diversity of the industry's computer capabilities, the modified section essentially suspends the requirement that volatility can only be shown by calculating values based on the guaranteed and mid-point scales and permits the use of alternative scales or a hypothetical illustration to demonstrate volatility until January 1, 2001, unless these alternative scales or the hypothetical are extended or made permanent by order of the Commissioner. The alternative scales include: the dividend component of the illustrated scale reduced by 50%, or the dividend and/or credited interest component of the illustrated scale reduced by 50% of the interest component of the illustrated scale in excess of policy guarantees.

Staff was also persuaded that to require guaranteed values in every Supplemental illustration, regardless of whether their inclusion was necessary to avoid obscuring the guaranteed values depicted in the Basic or to show volatility, was overly broad and therefore the requirement needed to be reformulated to target those situations where the absence of guaranteed values in the Supplemental could be misleading or deceptive. For example, in the case of a "plain vanilla" illustration where both the Basic and Supplemental simply show cash value and the death benefit at different durations, there is no compelling legal need to show guarantees in the Supplemental, unless of course the Supplemental, because of its length or other factors, overwhelms or obscures the Basic. In that case the illustration would violate existing advertising rules. Also, if the Basic illustration depicted a concept, volatility would be shown in the numeric summary and again, unless the Supplemental obscured the Basic, there is no compelling legal reason to require that the Supplemental repeat the guaranteed or mid-point values.

But in those cases where the Supplemental shows a concept and the Basic does not, requiring the Supplemental to show guaranteed or mid-point values would not repeat the guaranteed and midpoint values shown in the Basic. Those values would be significantly different in the Supplemental because they are directly affected by the particular concept being illustrated. The fact that the Basic shows volatility in this case is not really relevant since volatility is not shown with respect to the concept that is being illustrated in the Supplemental. And since it is the concept which is being marketed and which supports the decision to purchase, omission of volatility in this case is misleading and or deceptive.

Therefore, the modified proposal eliminates the requirement that guarantees always be shown in a Supplemental illustration, and instead adopts a more targeted approach which is triggered by the illustration of a concept. Essentially, the modified version requires volatility to be shown in the Supplemental only if a concept is being depicted there and it is not shown in the Basic. A concept is defined as the use of non-guaranteed policy values to pay premium or policy expenses (suspension or reduction of premium) or to generate distributions to the policyholder (cash flows).

Because staff was sensitive to comments regarding the length of illustrations, volatility can be shown on a one page summary called an "extended numeric summary." Although similar to the Model's numeric summary, the extended numeric summary requires some additional disclosure regarding suspension of premium and termination of cash flow.

Finally, staff was persuaded to exempt entirely from this subsection those lengthy and often complex illustrations involving split-dollar and other employer benefit plans, because given employer involvement and presumed sophistication, there was little likelihood of consumer harm. That which was exempted was defined as "an illustration for a proposed policy under which an employer pays all or part of the premium or shares part of the benefits, such as a split dollar plan, or an illustration of executive bonuses or deferred compensation. . . ."

The department received a total of eight oral and written comments on the proposed modification regarding guaranteed values in Supplemental illustrations. Two insurers strongly supported the modification; one insurer expressed conditional support pending further review; another insurer expressed support but for the expiration of the optional scales; one illustration software vendor expressed approval; one industry organization expressed the view that the modification was preferable to the original proposal, but withheld outright endorsement; and two insurers expressed strong opposition to the reworked requirement.

Those that opposed the modification indicated generally that it was not an improvement over the Model; that it would increase costs and be confusing to the applicant; and that it would duplicate that which was presented in the Basic illustration and therefore is unnecessary. One opponent suggested that "improved disclosure could be accomplished by simply requiring that the Basic illustration precede any supplemental illustration" arguing that "such a change introduces no new definitions or exemptions, is a slight deviation from the Model and may be the most effective means of insuring that consumers see guaranteed values."

Agency Response: The department disagrees that the section as reformulated requires duplication of the values shown in the Basic and therefore is unnecessary. As previously indicated, one of the major reasons behind the modification was to avoid unnecessary duplication of guaranteed or mid-point values.

While the proposed section does not require repetition of guaranteed values in the Supplemental, existing advertising rules might require such repetition under certain circumstances. This might be the case, if for example, a Basic illustration is so overwhelmed by the accompanying Supplemental that the guaranteed values or volatility are rendered obscure.

In this regard, several commenters urged repeal or modification of these rules essentially arguing that since the Model does not require showing guaranteed values in a Supplemental illustration, any rule which requires this result, regardless of the circumstances or merit of its application, is inconsistent with the Model. In other words, even in those cases where the failure to include guaranteed values in the Supplemental would render the illustration misleading or deceptive under current formulations of the law⁶, the Model's presumed mechanical standard of 'no guarantees in the Supplemental' should prevail.

The department is unwilling to entertain this recommendation. It is not convinced that the drafters, by adopting the Model,

intended to repeal well established concepts regarding deceptive trade practices which are found in the statute, case and administrative law of Texas and the several states. Nor would the department, assuming that it had authority to repeal rules which simply reflect the current state of Texas case law, consider doing so since no convincing case has been made for this change which would inevitably provide less protection for Texas consumers.

The department finds nothing in the minutes or other records of the NAIC regarding adoption of the Model which would support the assertion that the drafters intended for the Model to supercede former promulgations by the NAIC regarding the advertising of life insurance. On the contrary, the Life Disclosure Working Group Report on Review of NAIC Models found no conflict with earlier advertising model regulations.⁷ Additionally, the prohibition found in Section 6B of the Model which proscribes using "non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead" lends further support to the proposition that the Model drafters did not intend to repeal existing advertising regulations.

The department, therefore, interprets the proposed subchapter so that it is in harmony with its existing advertising regulations, to wit: under the subchapter it is not necessary to display guaranteed values in a Supplemental, unless, under the particular circumstances, their presence is otherwise required by another appropriate rule.

Several commenters suggested that by modifying the Model to require the Basic illustration to precede the Supplemental, the department's concerns regarding the obscuring of guaranteed values would be satisfied since as one commenter put it, this may be "the most effective means of insuring that consumers see guaranteed values." While this recommendation might be effective when what is shown in the Basic is repeated in the Supplemental, it is not a solution to the problem, previously described, wherein a Supplemental illustration shows a concept and the Basic does not. The fact that the Basic precedes the Supplemental does nothing to remedy the fact that volatility is not shown for the concept illustrated in the Supplemental.

The department also disagrees with the position put forward by several commenters that consumers somehow will be confused or not helped by requiring illustrations to show how a concept can be adversely affected by a reduced scale. The department finds that it would be very useful indeed to demonstrate to a prospect, for example, the fact that if the current credited interest rate falls to the guaranteed rate, there may be no supplemental retirement income, or if the rate falls to the midpoint, the income stream may be foreshortened. What better way to communicate the fact that the illustration should not be considered or relied upon as a representation or claim of future policy performance than to show how the policy might perform under reduced assumptions.

While it is understandable from a marketing perspective why it might be undesirable to show the potential for adverse performance, it is clear that past marketing abuses, particularly the use of concept illustrations which failed to convey downside risk, engendered the Model and this adoption. Had the risk of under or non-performance been clearly communicated to prospective insureds in concept illustrations as required by this proposed subsection, the current crop of class action suits which have targeted many insurers might very well have been prevented or at least diminished.

A number of commenters argued that the proposal would greatly lengthen illustrations and that it would be difficult to show guaranteed values on the same page with non-guaranteed values, especially when loans and withdrawals were being illustrated. While most of these comments were directed to the pre-amendment version of the subsection, several also made this point with respect to the "Proposed Concept Amendment." The department does not believe that the reformulated proposal will significantly lengthen illustrations, especially if the extended numeric summary option is chosen. That option should add only one page per Supplemental illustration. If an insurer chooses, it can use the ledger format which would increase the length beyond one page, but that option remains exclusively with the insurer and is not a requirement of the rule.

Several commenters expressed disappointment that the alternative scales are set to expire at a future date and urged that these options be made permanent. In support of their position they cited increased and recurring software costs; the fact that guaranteed values were not necessary to adequately show volatility; and that some concepts simply could not be illustrated because guaranteed values would not be sufficient to support the concept.

The department acknowledges that complying with this subsection will force insurers to incur programming and actuarial testing costs above those already required for compliance with the Model. The extent of those costs will vary among insurers depending upon the sophistication of each insurer's present or near-term computing capabilities, and the nature of the products and concepts illustrated. Estimates of startup-costs based upon the original published version of this subsection obtained from eight insurers of varying size ranged from a low of \$17,000 to a high of \$794,000, with a median cost of \$41,187. Since the modified version of this section provides much greater flexibility and only requires alternative scales when a concept is illustrated, these costs should be significantly reduced.

The department is also persuaded by the argument put forth by a number of commenters that a long lead time for implementation of this subsection will have a positive impact on software programming costs and ease the demand for already scarce resources currently committed to resolving the Y2K problem. For these reasons the department has extended the date for full compliance with this subsection from January 1, 2000, until January 1, 2001.

This long lead time will also afford the department an opportunity to carefully study and review the merits of making the alternative scales permanent. During this period, the department plans to work closely with insurers, agents, computer programmers and others to test the argument that permanently providing alternatives to showing guaranteed values will greatly reduce programming costs. The Department also recognizes that requiring guaranteed values has a disparate impact on those insurers who offer participating policies, since the absence of dividends effectively precludes the illustration of most concepts on a guaranteed basis. On the other hand, the Department must carefully evaluate whether on a legal basis it is advisable or even permissible to abandon the long standing requirement that guaranteed values be afforded equal prominence in illustrations.

While the Department is committed to carefully evaluating every reasonable proposal which will reduce either the cost or length of illustrations, it is resolute in its legal opinion that in

order to avoid deception, concept illustrations must effectively communicate volatility. The Department believes that to the extent that this departure from the Model increases short term costs, those costs will be more than offset by the savings in litigation costs that will inevitably be incurred by the industry if volatility is not shown at all.

§21.2206(1)(I)-(M), (O), (Q)-(S) and (U)-(V) Supplemental - Other

In the proposal, Staff applied the Model's formatting requirements for a Basic illustration found in Section 7(A) to all illustrations, including a Supplemental. Staff found it peculiar, and perhaps a drafting oversight on the part of the Model's authors, to require a Basic illustration to conform to certain elementary formatting requirements while exempting a Supplemental from these same requirements altogether.

In addition to basic formatting standards, the proposal requires appropriate description of the assumed payment on which the illustrated values are based and prohibits the illustration of non-guaranteed elements based on a scale more favorable than the illustrated scale.

The department received very few written comments on this section. Of the five that did comment, all were opposed to this departure from the Model. In support of their opposition, four commenters argued, without specifying any particular subsection, that this departure would burden the consumer with extra paper and text which will "foster confusion, not understanding;" will be expensive to implement "because no illustration programming exists which could comply;" and would require "wholesale restructuring of Supplemental illustration formats without providing any useful information." One comment specifically objected to §21.2206 (1) (M) which among other things requires that "the assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay (defined as out-of-pocket payment) or contract premium, as applicable."

According to this comment, moving this requirement to a Supplemental, where a suspension or reduction of premium concept is illustrated using surrenders of additions or policy loans, will either create a misnomer or will force an "additional column of undefined numbers." The proposal would create a misnomer in this situation because, it is argued, the column which is required to be labeled as "premium outlay" would include funds from either loans or surrender of additions which do not in fact represent out-of-pocket payments. To avoid this result, another column showing premium outlay would be required in addition to a "total outlay" column, and the existence of this extra column would stretch "the practical contents of illustrations beyond their limits" inasmuch as significant space is already occupied in showing the use of loans or additions. The argument continues that since a Supplemental under the Model's formulation permits simply showing total outlay, and because it is total outlay that a policyholder must pay, the change is unnecessary, impractical and will lengthen illustrations.

Agency Response: The Department agrees that the practical effect of §21.2206 (1) (M) will be to force an extra column whenever loans or additions are used in illustrating a suspension or reduced premium concept in a Supplemental illustration. The department also acknowledges that either illustration length or costs or both could increase in this specific situation. The Department notes, however, that the Model would yield this same result if this particular concept were illustrated in a Basic.

The department desires to preserve the flexibility provided by the Model in this regard and believes that §21.2206 (1) (M) could increase costs and/or the length of these particular concept illustrations. The core question raised by this comment is whether it is legally necessary to carve out premium outlay or contract premium from total outlay in a Supplemental illustration. Stated another way, would it be misleading or deceptive to lump them together with funds derived from loans and withdrawals.

Although the department has some reservations, it believes that since premium outlay and/or contract premium would be fully shown in the Basic, permitting a total outlay column in a Supplemental which reflects total policyholder costs would not be misleading and should therefore be permitted. Therefore, the adoption includes a change which moves this requirement to §21.2207. Consistent with this change, the extended numeric summary found at §21.2206(1)(M) is also modified to permit the use of total outlay. The department also has determined that §21.2206 (1) (K), which requires that the "assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified," is inconsistent with the extended numeric summary format permitted for concept illustrations, and therefore this section is likewise returned to §21.2207 regarding formatting for Basic illustrations.

The department, however, rejects the argument that the remaining formatting requirements will confuse consumers and therefore are an unnecessary departure from the Model. The comments make no persuasive arguments that consumers will be confused by telling them that what is being illustrated is life insurance; or by revealing which values are not guaranteed; or by identifying an element by its policy name; or disclosing surrender charges when accumulation values are shown; or warning a prospect that premium is always required even though the illustration shows suspension of premium, or for that matter, placing a sequential number on each page. Rather, this information is essential to avoid deception and make illustrations less confusing and more understandable.

Further, the department's current rules already either expressly or impliedly require most of these formatting standards.⁹ For example, §21.114 (4) requires that an invitation to contract advertisement "shall clearly and conspicuously disclose any charges or penalties such as administrative fees, surrender charges, and termination fees contained in an annuity or life insurance policy on withdrawals made during early contract or policy years." In other words, cash surrender values must be shown. Similarly, §21.104 (d) mandates that all advertisements, other than institutional, "shall explicitly and conspicuously disclose that the product concerned is . . . " life insurance. Labeling a Supplemental illustration a "Life Insurance Illustration" is consistent with, if not required by, this existing rule. Failure to indicate or otherwise identify that the values shown in a Supplemental are not guaranteed is an omission of a material fact necessary to make that which is shown not deceptive or misleading and violates a number of the department's existing regulations, including §§21.103 (a) and (d) and 21.105 (c). Failure to identify the account or accumulation and surrender values, if shown, by the names given these elements by the policy, could, depending on the words chosen to describe these elements, be deceptive, and therefore this requirement simply makes specific that which is otherwise required by §21.103(d). Finally, given the substantial recent litigation surrounding the "vanishing premium" concept, the department finds it puzzling that the drafters of the Model would require disclaimer of a paid up policy in a Basic, which

is unlikely to show a suspension of premium concept, while not requiring the same disclaimer in the Supplemental which is a far more likely venue for the presentation of this scenario. Section 21.114 (6) already requires the substance of this disclaimer for participating policies, and the current proposal simply extends this existing requirement to encompass universal life insurance policies.

Given the nature of these formatting requirements, the department also finds unpersuasive the argument that their application will lengthen or otherwise make Supplemental illustrations unwieldy. Other than for the disclaimer regarding paid-up policies, these formatting rules should have only a de minimus effect on illustration length.

The department also remains unconvinced that implementation of these changes would be expensive or that "no programming exists which could comply." Over the years the department has reviewed hundreds of illustrations which routinely incorporate these formatting styles.

§21.2206(1)(W) Policy Loans Shown on A Guaranteed Basis

Because the Model is silent on this point, insurers questioned what interest rate could be used when illustrating the effect of loans on policy values on a guaranteed basis if the contract did not specify a maximum loan interest rate. In the Model's interpretative QUESTIONS ON LIFE ILLUSTRATIONS MODEL REGULATION the Model's drafters in Q7.5 made clear that what was required to be shown in this situation was the "maximum rate of interest that could be charged under state and federal law." The Insurance Code, Article 3.44C requires that a maximum rate of not more than 15% be stated in the policy, even if the loan interest rate is otherwise tied to an outside index. Thus, to make explicit what was implicitly required by the Model in light of state law, staff added this subsection which requires that "if" policy loans are illustrated on a guaranteed basis, interest charged must be calculated at the highest numeric rate permitted under the terms of the contract."

Five insurer commenters, perhaps unaware of the Insurance Code, Article 3.44C, opposed the adoption of this subsection on the basis that it failed to address the problems associated with policies which have no maximum numerical loan rates and which instead rely on outside indexes. They argued that insurers with these contract provisions would be precluded from knowing the highest numerical rate permitted under the terms of the contract.

A number of insurers took issue with this subsection, claiming it was a departure from the Model, while still others urged, in essence, that the Model not be adopted in this regard because illustrating the effect of loans on this basis would cause values to be consumed quickly and, in the words of one commenter, thereby "effectively rendering the illustration of guaranteed useless." Several commenters suggested revisions to this subsection which they argued would present a more realistic and useful picture to consumers. These suggestions included using the maximum spread between the loan rate charges and the rate credited on funds supporting the loan, or using the current loan interest rate as of the illustration date with a footnote disclosing the maximum rate.

Several insurers indicated that if this subsection was adopted it would require programming changes which would adversely affect their ability to meet the proposed effective date of

September 1, 1998, and called for extensions of one duration or another.

Finally, several insurers and one association commented that the proposal, by requiring a specific numeric rate, would produce, in effect, a worse than "worst case" scenario for those contracts that defined the guaranteed maximum loan interest rate to be the lower of (1) the maximum numerical interest rate specified or (2) a constant addition to the current crediting rate. Since the illustration in this situation is by definition on a guaranteed basis, the current crediting rate will in effect equal the guaranteed crediting rate and thus the maximum numerical rate will never in fact be reached.

Agency Response: The department, for the reasons previously stated, disagrees that the proposed subsection departs from the Model or that it fails to properly address the problem of indexed loan interest rates. The department also disagrees with the premise that by requiring the maximum contract loan rate, illustrations on a guaranteed basis are effectively rendered "useless." Illustrations on a guaranteed basis are intended to reflect the "worst case scenario," in that they reflect only those values that an insurer is contractually obligated to deliver. Permitting anything other than the maximum loan rate would be inconsistent with showing values on a guaranteed basis. The fact that a particular concept may not work on a guaranteed basis, rather than rendering the illustration "useless," imparts important information to the prospect, to wit: the illustration should not be considered or relied upon as a representation of future policy performance, but rather as a device simply to show how the policy works given different assumptions.

The department agrees that insurers may need more time to implement necessary program changes. For this reason, and the reasons outlined in the discussion at §21.2214, the department has extended the compliance date to July 1, 2000.

The department also agrees that the effect of the current proposal on contracts which define the maximum guaranteed loan interest rate in terms of a guaranteed spread based on the current interest crediting rate would be to produce a distorted worst case scenario. Therefore, the department has amended the proposal to permit the illustration of this product feature.

§21.2206(2) General Requirements/Prohibitions

Illustrated Scale. (2)(E)

One agent commenter urged that the prohibition against depicting policy performance on a scale more favorable to the policyowner than that produced by the illustrated scale would prevent him from showing clients interested in purchasing insurance for business or estate planning purposes different "what if" outcomes using higher than current credited interest rates. While the commenter agreed that this prohibition "was understandable for ordinary consumers, sophisticated consumers should have the opportunity to see how the policy might perform at rates greater than current." He urged that a change be made to the Model and the current proposal which would permit values greater than current to be permitted in Supplemental illustrations provided that there is "bold disclosure at the top of the page."

Agency Response: The department disagrees. The suggestion would require the department to carve out an exception for "sophisticated consumers." Aside from the difficulty of determining which standard to apply to whom, the department believes that all consumers are entitled to the protection afforded by the

Model. Life insurance illustrations pose two fundamental problems for regulators: One, as discussed earlier, is the fact that unless adequately disclaimed, the numbers shown can be taken as a claim of future policy performance; the other involves the integrity of the numbers themselves. Some insurers, to gain an unfair competitive advantage, built into their current scale unrealistic assumptions regarding future experience which included: improvements in mortality experience, decreases in administrative costs and the consumer price index, and increases in investment return and lapse rates.

To protect all consumers from illustrations based on unsupported assumptions, the drafters of the Model developed a number of actuarial standards or tests that an insurer's current scale must pass before it can be illustrated. The Texas rule adopts these actuarial standards⁹ without modification. While the tests themselves are too actuarially complex to be detailed here, they basically restrict or "discipline" the assumptions underlying policy pricing. Non-guaranteed elements must be supported by actual, recent and verifiable experience and can not be lapse supported.

If an insurer's current scale does not pass these tests, it can not be illustrated, and what instead must be shown are non-guaranteed values as reduced by these tests. If, for example, an insurer is currently crediting 7.5% on a universal life insurance policy, but the tests require a crediting rate of 7%, then the illustration must be based on this reduced rate.

The department, therefore, makes no change in the adoption to exempt any particular group of consumers.

Stale Illustrations (2)(G).

The subsection prohibits the use of a particular illustration if there has been a change in the currently payable scale or the age of the proposed insured since the illustration date. Although commenters universally agreed that the use of a stale illustration to misrepresent policy values should be prohibited, they identified a number of practical problems with the section.

Several commenters indicated that this addition to the Model would increase the risk of inadvertent violations because of a lack of knowledge about an insured's birth date, and that clients or their financial advisors sometimes inadvertently give an inaccurate age. Several others indicated that the use of an older illustration could be reasonable and legitimate where, for example, backdating is used to save age in the insurance application or when showing an older application prepared at the time of sale is used to show growth in policy values. Several questioned the need for the proposal since if a stale illustration was used to misrepresent policy values, this conduct already would be actionable under the insurance code or the department's rules.

Agency Response: The department agrees that the proposal could increase the risk of inadvertent violations and is persuaded further that there can be legitimate uses for stale illustrations. For this reason, the subsection is deleted in the adoption. The department will instead rely on the Insurance Code, Article 21.21, and its advertising regulations to prosecute misuse of stale illustrations.

Insurer Accountability for Third-Party Illustration Software (2) (L)

This section requires an agent to receive the approval of his or her insurer before using software and illustrations developed by third party vendors. Currently, insurers are required by §21.122 (d) to "maintain a system of control over the content, form, and

method of dissemination of all advertisements concerning its policies." This system of control also mandates that an insurer require its agents to submit any proposed advertisements to the insurer's home office for the insurer's prior written approval. This approval can not be delegated nor can an insurer escape legal liability for advertisements prepared by third parties. The proposed section simply extends the logic of the department's current advertising rules to cover the software that generates the illustration.

The department received only one comment on this section. Without citing a specific reason other than to state that the proposal "clearly requires approval of third party materials which could be or considered to be or contain illustrations," the comment opposed the section.

Agency Response: The department disagrees and remains convinced of the merit of this proposal. It is consistent with current advertising rules, and is necessary given the fact an insurer's illustration actuary must certify that illustrations used conform to the illustrated scale. The Model does not contemplate this important responsibility being delegated to third party software vendors. Further, home office control would be eroded if not rendered meaningless, if the insurer was required to approve the format of illustrations, but excused from the function of testing their output for conformity with the actuarial standards imposed by the rule.¹⁰

§21.2206(3) Prohibition Against Increase in Non-Guaranteed Interest Rate

This section departs from the Model in that it prohibits, at any illustrated duration, an increase in the non-guaranteed interest rate unless there is a corresponding increase in the guaranteed interest rate. The proposal reflects the long-held position of the department that only guaranteed values can be shown in a life and/or annuity contract. Values based on non-guaranteed interest rates have never been permitted to be shown in life and annuity contracts, nor have values based on persistency or other bonuses been permitted to be shown, unless they are guaranteed.

The reason for this prohibition stems from the department's position that current interest rates, especially persistency or other bonuses, are simply a form of excess interest which can be easily manipulated or not declared and therefore, inclusion of these interest rate/bonuses in the contract form "encourages misrepresentation" within the meaning of the Insurance Code, Article 3.42 (i)(2) and such contracts are routinely denied approval. Since non-guaranteed bonuses can not appear in the contract, any illustration or other advertisement of them would violate the Insurance Code, Article 21.21 §4 (8) which prohibits as a rebate or inducement the offering to give anything of value which is not "specified in the contract."

The department received seventeen comments on this subsection and all of them were opposed to this change from the Model. A number of commenters quarreled with staff's legal analysis, arguing that since excess interest is provided in the contract, and a bonus is in fact excess interest, its illustration does not violate the Insurance Code, Article 21.21 §4 (8). Others in this same vein argued that the Insurance Code, Article 21.21 §4 (8) (b) (i) specifically exempts bonuses as long as they are fair and equitable to all policyholders and in the best interests of the company.

A significant number of commenters pointed out that the practice of increasing the credited interest rate (as opposed to a lump sum persistency bonus) was not only widespread, but appropriate, and that to prohibit this benefit would discriminate against and be unfair to Texas policyholders. In support of this position commenters pointed out the common practice by insurers of amortizing initial policy costs (acquisition and others) over early policy years which is reflected in the development of dividend or crediting scales. Once these costs are fully recovered, the savings should be passed along to the policyholders in the form of higher dividends or decreased spreads in the credited interest rate. This practice also was said to reduce the risk to insurers that initial costs will never be recovered due to adverse lapse experience, and assures that persistent policyholders do not end up paying an undue proportion of the issue expenses of those who lapse in the early years. The point was also made that this practice tends to improve a company's persistency rates and therefore favorably affects mortality, expense and investment results.

Several commenters noted that an increase in either the dividend scale or credited interest rate in later durations due to the recovery of expenses did not fall into the same category as persistency bonuses or retrospective bonuses which these commenters agreed were either ill-advised or harmful and should be prohibited. The American Academy of Actuaries pointed out that this practice is "significantly different from the type of persistency bonus where a large lump sum becomes available at a certain duration, representing a reward for policyholders who reach that duration while shortchanging those who terminated one day earlier. Instead, cash value growth is smooth and continuous, with the values growing somewhat faster after the initial expense amortization period." The Academy also argued that the Model's self-support and lapse support tests would preclude the illustration of persistency bonuses that unfairly discriminate in favor of the long term policyholder.

A number of commenters observed that these same tests would reduce the risk of unsupportable credited rate or dividend increases. They argued that because of these tests, the company must be able to demonstrate that the illustrated pattern of dividends or credited interest rates can be paid assuming future experience is consistent with recent historical experience. They also pointed out that the illustration actuary is prohibited by the Model and the Texas proposal from certifying a scale that assumes an increase in the investment earnings rate, or improvements in any other of the experience factors.

In response to Staff's concern regarding the possible illusionary nature of these bonuses, several commenters remarked that the likelihood of whether these bonuses would actually be paid was no greater or less than for any other non-guaranteed element and that therefore to prohibit these increases which would otherwise be permitted under the Model (assuming they passed the actuarial tests), is inconsistent with permitting the illustration of non-guaranteed elements. These same commenters also pointed out that some level of protection against abuse in this area is built into the Model and the Texas proposal, in that insurers through their illustration actuaries, must report to the department any reductions of non-guaranteed values for reasons other than experience (manipulation in the pricing margins).

Finally, several commenters expressed the opinion that requiring a corresponding increase in guaranteed crediting rates

would not protect the policyholder, could result in higher premiums, and in the words of one commenter, "is certain to complicate the product development process." It was argued that this requirement would only protect the policyholder in the unlikely event that the current crediting rates fell to the level of the guarantees or when the insurer otherwise intended to reduce or eliminate the increased rate. Several commenters also pointed out that since the subsection did not prohibit reduction in expense or mortality costs, these policy elements could easily be manipulated in order to obtain a result equal to an increase in credited interest or dividends, thus effectively evading the prohibition altogether. The proposal would prove costly, because by requiring an increase in the guaranteed rate insurers would be subjected to a significant deficiency reserve requirement and the higher costs of holding these reserves would be passed on to the policyholders, together with increased costs due to the added complexity of both reserve and non-forfeiture value calculations.

Agency Response: The department is persuaded that the practice of increasing the credited interest rate or the dividend amount after initial expenses have been fully amortized is a common industry practice and does not constitute the type of bonus which is discriminatory or unfair to lapsing policy holders.

The department is less sanguine than many of the commenters and the authors of the Model that the requirement that insurers report to the department any reductions in non-guaranteed values for reasons other than experience will prove effective in policing insurers, who absent adverse experience, renege on their commitment to pay the values illustrated by subsequently manipulating pricing spreads. Nonetheless, after careful reflection based upon the comments received, the department is uncertain that its current policy is any more effective in protecting insureds from this kind of manipulation than provisions required by the Model.

Because the department believes that interest or dividend increases based on a reduction of expenses or profits are not discriminatory or otherwise unfair to lapsing policyholders, and that the current subsection is likely to increase insurer costs and is of marginal utility in preventing manipulation of pricing spreads, this section is revised in the adoption to permit the illustration of these kinds of "bonuses." Concurrently with the adoption of this rule, the department will permit, subject to certain limitations¹¹, the inclusion of this particular product feature into life insurance contracts.¹²

§21.2207(1) Narrative Summary

The published draft makes explicit the order of the various parts of a Basic illustration which were implied¹³ by the Model, to wit: Narrative Summary, Numeric Summary and finally, the Tabular Detail. Although no one expressly objected to this clarification, one commenter indicated that the language used would preclude a cover page.

Agency Response: The department has no objection to the use of a cover page and has modified the section to permit its use.

§21.2207(2) Numeric Summary

The Model, Section 7 D, requires that an applicant or policyowner sign a statement on the numeric summary page certifying that the signatory has received a copy of the Basic illustration, understands that "any non-guaranteed elements illustrated are subject to change and could be either higher or lower," and that the agent "has told me they (non-guaranteed elements) are not

guaranteed." Likewise, the agent or other authorized producer must certify that the illustration has been presented to the applicant, that he has "explained that any non-guaranteed elements illustrated are subject to change," and has "made no statements that are inconsistent with the illustration."

Staff deleted the certification requirement because it felt that it was inappropriate as a matter of public policy for the State of Texas to force each consumer, regardless of his or her actual sophistication, knowledge, literacy or ability to understand the English language, to certify that he or she "perceives and comprehends the nature and significance of" (understands) that an undefined actuarial term of art (elements) if non-guaranteed are subject to change, could be higher or lower and that the agent has stated that the non-guaranteed elements are not guaranteed. At best this requirement is unfair because it could, in subsequent litigation, be used as an admission even though it may not be true. At worst, the requirement could amount to a waiver of rights under the Texas Deceptive Trade Practices Act.

Nor did staff believe it was appropriate as a matter of public policy to permit agents to certify that they have said nothing during the sales process which was inconsistent with the illustration when staff knows, based on enforcement experience, that a small minority of agents may do and say whatever is necessary to obscure or otherwise minimize the effectiveness of the disclaimers and the guaranteed values.

In staff's view, the Model's certification requirement could be used to unfairly favor one party to a life insurance transaction, the insurers and their agents, over the other party, the consumer-insured. Since it is entirely reasonable to assume that in the event of litigation this certification could be used against the consumer-insured, the Model, in effect, forces the department to take sides in private litigation regardless of the relative merits of the parties. Staff believes that this result is inconsistent with the promotion and protection of the public interest.

Although staff deleted the requirement, it nonetheless did not prohibit an insurer from utilizing the Model's certification language if, in light of its own appraisal of state law, it chooses to do so.

The department received a total of 33 written comments on this subsection, more than on any other. Fifteen came from agents who universally opposed the deletion of this requirement. Most advanced no specific reason other than they supported the Model. One agent argued that it was "pointless to improve illustration accuracy if there is no guarantee that the consumer actually saw and understood the illustration prior to sale." Another expressed the opinion that after the sale he did not "want people saying that they did not receive nor understand the illustration."

OPIC supported the deletion. OPIC argued that "consumers may feel compelled to sign even if they don't understand" and also reasoned that regardless of whether the certification could constitute an illegal waiver, "policyholders may perceive that by signing it they have waived their rights."

One insurer supported staff's decision to neither require nor prohibit a policyowner applicant's signature remarking that "many applicants may be uncomfortable signing a statement saying that they understand everything the agent has told them," adding, that "even if they think they understand, they might still

not." This same insurer also questioned how requiring such a statement could ever benefit the applicant.

One insurer opposed the deletion on the basis that the option to choose forced upon it a sort of Hobson's choice: "If our companies do not require signatures in Texas, but do everywhere else, we will be criticized by some for adopting lower standards in Texas. If we require signatures in Texas, others will criticize us for 'overreaching' or seeking an 'illegal waiver'." On a similar note, another insurer observed that since Staff has argued that the statement might constitute an illegal waiver, its option to choose the Model's signature requirement was seriously limited.

At the hearing, another insurer supported the certification requirement because of its "sentinel effect," explaining that if the agent and the applicant are required to sign the statement the "agent is more likely to explain it" thus reinforcing previous disclaimers. Similarly, one insurer testified that the certification would "heighten the chances" that the consumer would understand the nature of non-guaranteed values.

One insurer made the observation that consumer certification confirms "that the agent has engaged in proper sales practices and that the applicant understands what he or she has signed." Closely related to this point were other comments which suggested that the certification "places the responsibility on the consumer to understand the product and illustration," avoids "confusion as to what the agent relates to the applicant," provides "verification that the agent did not represent all elements to be guaranteed," is necessary "to demonstrate compliance with the rule," and forecloses subsequent "he said, she said" swearing matches in court.

Several insurers indicated that regardless of whether an applicant or insured acknowledges understanding, some acknowledgment is necessary to ensure that the purchaser received a full, fair and compliant illustration. In response to questioning at the hearing from the Commissioner as to whether all insureds or applicants would actually read the certification language prior to signing, one insurer indicated that its only interest was in establishing that the individual actually received the illustration: "We would be fine if the signature line just said that I've received this illustration." Several agents responded to this question by indicating that either some, many or most consumers would not read the statement prior to signing.

One insurer challenged staff's legal analysis that the certification requirement might constitute an illegal waiver, citing Prudential Insurance Co. of America v. Jefferson Associates, 896 S.W.2d 156 (Tex. 1995) which held that an "as is" clause in a commercial real estate contract did not amount to a waiver, but rather was an "acknowledgment of fact" and that by analogy, the deleted certification requirement fell into this same category.

Several alternatives to the subsection were proposed. One insurer suggested that the word "understand" be deleted from the Model's certification. Another offered that the certification requirement be retained with the proviso that an insurer could not use the same as a "defense to a claim made by the insured." As so modified, the certification would serve the purpose of requiring the insured "to pause and think" before entering into the contract, but would not otherwise compromise his rights.

Agency Response: The department agrees and disagrees in part. The department is not persuaded that the Model's signature requirement is effective in confirming that the agent

has engaged in proper sales practices or that the applicant perceives and comprehends the nature and significance of what he has signed. While this may be true in some cases, perhaps even a majority, it will not be true in others. Some unknown number of consumers, because of their particular circumstances, the nature or complexity of the product or because of agent misconduct during the sales process, will not understand that either the illustration of non-guaranteed values should not be taken as a claim of future policy performance, or the risk of volatility, or both. Some consumers, as established at the hearing on the rule, will not read the certification prior to signing. Others might understand that the illustrated values could go up or down, but not fully comprehend the effect such "fluctuations might have on other policy costs or values, or the proposed funding of policy premiums."¹⁴ In other cases, hopefully very few, it simply will amount to a falsehood when an agent certifies that he has made no statements inconsistent with the illustration.

No legitimate purpose is served in requiring certification by all when it is known that in some cases the certification will be untrue. Several written and oral comments indicate an intent to use the certification as a shield against future litigation. The department finds troubling comments suggesting that the purpose or effect of the deleted section is to shift "the responsibility on the consumer to understand the product and illustration," or to avoid confusion as to what the agent said or to verify that the agent did not misrepresent the product.

In light of the number of class action lawsuits which have been generated by sales illustrations it is understandable why some insurers would support certification as a way to deter litigation or defeat liability, but their reliance on what a certification establishes would probably be misplaced. The department believes the most effective deterrents to litigation are intelligible, accurate illustrations and agent integrity. Whether or not a particular court would find the certification a waiver or an admission by a party is unknown. Nonetheless, there appears to be a temptation on the part of some insurers to use it for these purposes and probably for impeachment purposes as well. While it is one thing for an insurer on its own initiative to require this kind of acknowledgement, it is quite another for the State of Texas by rule to require an insurer to obtain the certification. The State's blessing might very well determine whether the Model's certification is successfully used to defeat liability. Because it could be used for these purposes and under circumstances where what is certified is not true, the department believes that concepts of fundamental fairness prohibit it from imposing this requirement.

The department also is not persuaded that a workable solution to this problem would be to require the certification, but prohibit insurers from using it in the event of litigation. Whether the certification is useful as a "sentinel" or "pause and think device," is debatable, but adding a notice to the effect that this "certification can not be used against you in a court of law" is counterproductive to this purpose, would certainly disrupt the sales process, and might possibly encourage litigation. Further, even if the department found merit in this suggestion, it simply does not have the authority to alter or amend the Texas Rules of Civil Evidence.

The department is, however, persuaded by those comments suggesting that some form of acknowledgment is needed to verify that a compliant illustration has been received since both the Model and the published proposal require delivery

of a Basic illustration. For this reason the adoption includes a new subsection to §21.207(2) which requires a signed acknowledgment of receipt.

By making this modification, the department has not foreclosed use of the Model language by insurers who choose to do so. However, the department emphasizes that it strongly favors the use of the simple acknowledgment now provided by this subsection.

§21.2209(a)(4) Policy Delivery/Records Retention

At least six commenters noted that the rule as written would require companies to furnish a Basic illustration at the time of policy delivery, even though the Model only requires the delivery of a Basic illustration in this situation if the policy is issued other than as applied for, or if no illustration was used in the sales process.

Agency Response: The department agrees. This result was not intended by staff and occurred when the Model's numbering and paragraph sequencing was amended to conform to the Secretary of State's formatting requirements. The adoption restores the original meaning of the Model.

§21.2214 Effective Date

A number of insurers expressed concern that if Staff's proposed changes to the Model were adopted, they would need additional time to make necessary software and other modifications in order to comply.

Agency Response: The department agrees. The subchapter will apply to policies sold on or after July 1, 2000.

Suggested Additions or Amendments

One agent remarked that under both the Model and Staff's proposed rule, illustrations could be so lengthy as to make them unusable for many consumers. This problem occurs most frequently, according to this commenter, when multiple scenarios involving, for example, changes in premium or death benefits are shown. The commenter proposes exempting illustrations used in the sales process from the regulation, and require a compliant illustration only for the policy that is actually issued.

Agency Response: The department is sympathetic to the concerns expressed by agents that the Model and the Texas version can, especially when multiple scenarios are present, result in lengthy illustrations. The solution, however, is not to exempt illustrations from the sales process, but to look at ways to present the same information in an abbreviated format. Because the Model and the proposed Texas rule require that a Supplemental illustration show the same premium outlay as shown in the Basic, multiple sets of illustrations must be produced in order to show different scenarios based on either death benefit or premium amount. During the long implementation period provided by the current rule, the department with the assistance of insurers and agents, intends to explore ways in which illustration length can be reduced while still maintaining the integrity of the Model and this rule. For example, instead of separate sets of multiple illustrations, one narrative summary and multiple numeric summaries might prove workable. The department plans to study this and other options during this period.

Because of the number of subsections, the complexity of the issues raised and the fact that the proposal is based on the

Model, it is difficult to categorize the comments as either "for" or "against" adoption of the rule. For example, OPIC and CU opposed adoption because the rule permits the projection of non-guaranteed elements, but nonetheless support changes made by Staff to the Model. One agent opposed the Model and the rule on the basis that they restrict the projection of non-guaranteed values, but otherwise supports the proposed rule. These commenters are listed as "Conditionally Oppose." Most commenters support the proposed rule, save and except for where it departs from the Model. These comments will be grouped under the listing: "Conditionally Support." Finally, those that support the modification to the requirement that guaranteed values be shown in a Supplemental illustration will be identified as: "Support Concept Amendment."

Conditionally Oppose: Consumer's Union, Office of Public Insurance Counsel, Woodard Insurance.

Conditionally Support: Abreu and Brookman Financial; Aldridge Insurance Agency; Cambridge Benefit Corporation; Capital Plan Inc.; Carter Financial Management; Chapman Schewe; Clingman, Hairston; Johnson & Associates; Darleen Martin Financial Services; David J. Kerr & Associates; David Nelson III; Don Custer; Edmund Etlinger; First Financial Resources; Franklin & Associates; Fred Carpenter & Associates; Frie Financial Group, Inc.; Impelman & Skinner; J. Fraley Company; Jack Kissane; James Burghard; Janet Stevens; Johnson Financial Group; Management Compensation Group; Michael Schultz; Richard Hollis; Robert Cowan; Ronald Schutz; Texas Association of Life Underwriters; The Finley Agency; Today's Financial; WMA Securities, Inc.; Wade Graham; Wealth Management Advisors; Allstate Life Insurance Company; American General Independent Producer Division; American National Insurance Company; David Huff; First Colony Life Insurance Company; General American Life Insurance Company; Great West Life & Annuity Insurance Company; Kansas City Life Insurance Company; Life Insurance Company of Virginia; Lutheran Brotherhood; Manulife Financial; Metropolitan Life Insurance Company; Minnesota Mutual Life Insurance Company; New York Life Insurance Company; Northwestern Mutual Life Insurance Company; Pacific Life Insurance Company; Primerica Financial Services; Principal Financial Group; Reliastar Life Insurance Company; SAFECO Life Insurance Company; Southland Life Insurance Company; Southwestern Life Insurance Company; State Farm Insurance Company; Sun Life Assurance Company of Canada; Texas Association of Life and Health Insurers; Teachers Insurance & Annuity Association; The Equitable Life Assurance Society; The Prudential Insurance Company of America; The Reliable Life Insurance Company; Transamerica Occidental Life Insurance Company; Woodmen of the World; American Academy of Actuaries; and the American Council of Life Insurance.

Support Concept Amendment: American National Insurance Company; FIPSCO; General American Life Insurance Company (supports, provided options are made permanent); Principal Financial Group; Texas Association of Life and Health Insurers ("a more acceptable alternative" to requiring guaranteed values in the Supplemental, but prefers Model's formulation);

Oppose Concept Amendment: American General Independent Producer Division; Northwestern Mutual Life Insurance Company

¹ Some might argue that the phrase "same statement" could just as plausibly refer to the statement on the numeric summary

page which calls for consumers to acknowledge that they have received the basic illustration and "understand" that the non-guaranteed elements are subject to change rather than the "statement" or disclaimer which is required to accompany "any illustration of non-guaranteed elements." While it is conceded that the Model is textually ambiguous on this point, early drafts of what is now Section 8(A)(3) make clear that what was intended is the disclaimer found in Section 7(B)(5). See, e.g., Life Insurance Sales Illustration Model Regulation (Draft 3-13-95).

² "Since a sales illustration is simply an extension of the current scale of non-guaranteed elements into the future assuming current assumptions hold to that point, actual non-guaranteed elements will almost certainly vary from those illustrated." ACTUARIAL STANDARDS BOARD, ACTUARIAL STANDARD OF PRACTICE NO 24. Compliance with the NAIC Life Insurance Illustrations Model Regulation 3 (1995).

³ In determining whether a particular disclaimer is effectively communicated the courts, the Federal Trade Commission and the department's own rules consider a number of different factors: the length of the advertisement (considering the illustration as a whole, is the message of the disclaimer overwhelmed or rendered obscure); clarity (understandability of the language used when evaluated in light of the intended audience); unavoidably (is the disclaimer unavoidable by consumers acting reasonably, it being understood that reasonable consumers do not read the entirety of an advertisement or are directed away from the importance of the qualifying phrase by acts or statements of the seller); proximity and placement (the effectiveness of disclosures are improved by proximity to the representation qualified); and repetition (the repetition of the disclaimer in connection with the claim that triggers it enhances the likelihood of consumers noticing and comprehending the disclaimer). For a general discussion of the current state of the law of disclaimer, see 63 FED. REG. 87 "FTC Interpretation of Rules & Guides for Electronic Media." Texas courts in construing Business and Commerce Code §17.46(a) are to the extent possible to be guided by interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act. Section 17.46 of the Deceptive Trade Practices Act is incorporated into the Texas Insurance Code at article 21.21(7).

⁴ The department, for the reasons stated infra, is not persuaded that the Model was intended to repeal existing deceptive trade practices concepts regarding prominence or proximity, but a number of commenters are convinced otherwise.

⁵ Earlier drafts of the Model used "supplemental illustration" and "concept illustration" interchangeably. ⁶ Essentially these commenters challenge one of the cardinal principals of false advertising law, to wit: that when evaluating a transaction or advertisement for deceptiveness, in this case an illustration, the entire advertisement must be considered as a whole rather than any discrete part. D. BRAGG, P. MAXWELL & J. LONGLEY, TEXAS CONSUMER LITIGATION 76 (1978). It is the overall or general impression that must be considered in determining whether a particular act or practice has the tendency or capacity to deceive. This concept is incorporated into the department's advertising rules at §21.103 which provides in part:

Whether an advertisement has a capacity or tendency to mislead or deceive is determined by the commissioner . . . from the overall impression that the advertisement may

be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

It is from this first principal that many of the rules of the department have devolved including disclaimer, proximity, prominence and others. Section 21.4 (2) (any omission to state a material fact necessary to make the statements made (considered in the light of the circumstances under which they are made) not misleading); (emphasis supplied); Section 21.103 (b) ("the format and content of an advertisement of a policy must be sufficiently complete and clear to avoid. . . the capacity or tendency to mislead or deceive"); Section 21.103 (c) ("all information required to be disclosed by these sections will be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that the required information is not minimized, rendered obscure or presented in ambiguous fashion . . ."); Section 21.103 (d) (no advertisement may be used which because of . . . illustrations. . . or information omitted therefrom. . . has the capacity or tendency to mislead. . .")

⁷ "The working group discussed possible conflicts with the rule governing the advertising of life insurance and did not see any direct conflict that needed to be resolved in the model regulation." 1996 NAIC PROC. 3rd Qtr. 596. The drafters did indicate that the disclosures required in the Universal Life Insurance Model Regulation could be replaced with those required in the Model for a Basic illustration. LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION, Drafting Note at Section 7.

⁸ The department can find no express or implied requirement that pages must be sequentially numbered. However, such a requirement is necessary to protect both the department and the insurer when questions regarding the completeness of an illustration are raised during an investigation or enforcement proceeding.

⁹ They include the disciplined current scale, and the lapse-supported and self-supporting tests.

¹⁰ In response to comments to companion amendments to 28 TAC §21.102, the department withdrew 'software supporting' illustrations from the definition of 'advertisement.' Several commenters pointed out that, if read literally, the binary codes in the software generating illustrations would have to comply with various formatting requirements found in the advertising rules. In light of this change, the proposed subchapter was modified so as to accomplish this same result, but without imposing formatting requirements on software, a result which obviously the department never intended.

¹¹ The increase or reduction must be provided for in the contract; it must be applied prospectively and can not be applied retroactively; once activated it must be applied in all future years and can not be increased; it must be funded from either a reduction in expenses or profits (not out of surplus). Additionally, there is no requirement that these amounts must be reserved.

¹² In light of these significant changes to current department policy, the department wants to make clear that it will carefully monitor the required annual actuarial certifications for disclosure that a company has reduced its currently payable scale for business issued within the previous five years for reasons other than experience factors underlying the disciplined current scale. Upon finding that this reduction has occurred in a particular

case, the department will take appropriate disciplinary action unless convinced that the reduction was made in order to preserve solvency or for other acceptable reasons. Specifically with regard to "bonuses," if the department finds that these contractual bonuses are subsequently not honored for reasons other than adverse experience, it will presume that the company as of the illustration date had no present intent to honor them and that the illustration therefore was deceptive per se.

¹³ Section 7 C provides that "following the narrative summary, a basic illustration shall include a numeric summary." It could be argued that the Model permits a sequence consisting of the tabular detail, narrative summary and numeric summary. This was not the intent of the Model drafters. The tabular detail is to follow the numeric summary. See, QUESTIONS & ANSWERS LIFE ILLUSTRATIONS MODEL REGULATION, Q 7.1 (NAIC, 03-19-97).

¹⁴ One of the reasons cited by the New Jersey Department of Insurance for their deletion of the word "understand" from the certification. 30 N.J.R 2496 (July 6, 1998).

This subchapter is adopted pursuant to the Insurance Code, Articles 21.21 §13 and Article 1.03A. Article 21.21 §13 authorizes the commissioner to promulgate reasonable rules and regulations as are necessary to accomplish the purposes of Article 21.21 in the regulation of trade practices in the business of insurance by defining, or providing for the determination of all practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

§21.2201. Purpose.

The purpose of this Subchapter is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The Subchapter provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goals of this Subchapter are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

§21.2202. Authority.

This Subchapter is issued based upon the authority granted the commissioner under the Insurance Code, Article 21.21 §13 and Article 1.03A.

§21.2203. Applicability and Scope.

This Subchapter applies to all group and individual life insurance policies and certificates except:

- (1) variable life insurance;
- (2) individual and group annuity contracts;
- (3) credit life insurance; or
- (4) life insurance policies with no illustrated death benefits on any individual exceeding \$10,000.

§21.2204. Definitions.

For the purposes of this Subchapter, the terms in this section shall have the meanings placed opposite them unless the explicit wording of a section or portion of a section shall otherwise direct.

(1) Actuarial Standards Board – the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(2) Concept Illustration – the use of non-guaranteed policy values to pay premiums or policy expenses (suspension or reduction of premiums) or to generate distributions to the policyholder or owner (cash flows).

(3) Contract premium – the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(4) Currently payable scale – a scale of non-guaranteed elements in effect for a policy form as of the illustration date or declared to become effective within 95 days of the illustration date.

(5) Disciplined current scale – a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

(A) are consistent with all provisions of this regulation;

(B) limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(C) do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and

(D) do not permit assumed expenses to be less than minimum assumed expenses.

(6) Generic name – a short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

(7) Guaranteed elements – the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(8) Illustrated scale – a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(A) the disciplined current scale; or

(B) the currently payable scale.

(9) Illustration – a presentation or depiction used in the solicitation or sale of a life insurance policy that includes non-guaranteed elements of a policy of life insurance over a period of years and includes but is not limited to the three types defined in subparagraphs (A) through (C) of this paragraph.

(A) Basic illustration – an illustration that shows both guaranteed and non-guaranteed elements.

(B) Supplemental illustration – an illustration furnished in addition to a basic illustration that meets the applicable requirements of this Subchapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

(C) In-force illustration – an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

(10) Illustration actuary – an actuary meeting the requirements of §21.2211(c) who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

(11) Illustration date – the date on which the illustration was prepared.

(12) Insurer – a life insurance company as defined by the Insurance Code, Article 3.01 §(1); a fraternal benefit society as defined by the Insurance Code, Article 10.01 §§(a) and (b); a Mutual Life Insurance Company as defined by the Insurance Code, Article 11.01; or a Stipulated Premium Insurance Company as defined by the Insurance Code, Article 22.01.

(13) Lapse-supported illustration – an illustration of a policy form failing the test of self-supporting as defined in this Subchapter, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100 percent policy persistency thereafter.

(14) Minimum assumed expenses – the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from:

(A) fully allocated expenses;

(B) marginal expenses; and

(C) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner. Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(15) Non-guaranteed elements – the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(16) Non-term group life – a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(A) every plan of coverage was selected by the employer or other group representative;

(B) some portion of the premium is paid by the group or through payroll deduction; and

(C) group underwriting or simplified underwriting is used.

(17) Participating life insurance policy – a life insurance policy which provides for possible policyholder dividends.

(18) Policy owner – the owner named in the policy or the certificate holder in the case of a group policy.

(19) Premium outlay – the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(20) Self-supporting illustration – an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash

surrender values and any other illustrated benefit amounts available at the policy owner's election.

(21) Universal life insurance policy – a life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other separate accounts) and mortality and expense charges are made to the policy. A universal life policy may provide for other credits and charges, such as charges for the cost of benefits provided by rider.

§21.2205. Policies to Be Illustrated.

(a) Commissioner notification. Each insurer marketing policies to which this Subchapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this Subchapter, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this Subchapter, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(b) Prohibition. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(c) When delivery of illustration is required. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this Subchapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) When delivery of quotation is required. Potential enrollees of non-term group life subject to this Subchapter shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this Subchapter, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

§21.2206. General Rules and Prohibitions.

An illustration other than an in force illustration shall conform to the requirements set out in paragraphs (1) through (3) of this section.

(1) Disclosure and format. An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this Subchapter, be clearly labeled "life insurance illustration" and contain the basic information set out in subparagraphs (A) through (T) of this paragraph, as follows:

(A) name of insurer;

(B) name and business address of producer or insurer's authorized representative, if any;

(C) name, age and sex of proposed insured, except where a composite illustration is permitted under this Subchapter;

(D) underwriting or rating classification upon which the illustration is based;

(E) generic name of policy, the company product name, if different, and form number;

(F) initial death benefit;

(G) dividend option election or application of non-guaranteed elements, if applicable; and

(H) illustration date.

(I) The illustration shall be prominently labeled "Life Insurance Illustration."

(J) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages"). If a Supplemental illustration is used, it may be numbered either sequentially with or separately from the basic illustration.

(K) If the age of the proposed insured is shown as a component of a tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(L) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.

(M) An illustration may show a concept in either a basic or supplemental illustration or both, subject to the following:

(i) A concept may be shown in a basic illustration provided an extended numeric summary is used; or

(ii) If a basic illustration does not show a concept, the concept may be shown in an extended numeric summary appended to a basic illustration.

(iii) If a concept is not illustrated in a basic illustration pursuant to clauses (i) or (ii) of this subparagraph, it can only be shown in:

(I) a single supplemental illustration which calculates values based upon both the illustrated and one of the alternative scales set out in clause (iv) of this subparagraph; or

(II) a single supplemental illustration which calculates values based upon the illustrated scale, provided an extended numeric summary is attached which calculates values based upon both the illustrated and one of the alternative scales set out in clause (iv) of this subparagraph; or

(III) two supplemental illustrations, one which calculates values based on the illustrated scale, and the other which calculates values based upon one of the alternative scales set out in clause (iv) of this subparagraph; or

(IV) a disclosure document explaining in narrative form:

(-a-) that the depiction of policy values to pay premiums does not mean that policy premium requirements are canceled, forgiven or waived, that the operation of any plan to use policy values to pay premium is contingent upon non-guaranteed factors remaining unchanged, which may or may not occur; and/or

(-b-) that the use of policy cash flows for other purposes is contingent upon the non-guaranteed factors remaining unchanged, which may or may not occur; and

(-c-) such disclosure documents shall include a brief description of the non-guaranteed factors impacting the use of policy values to pay premiums or to generate cash flows and a hypothetical example for issue age 50 showing the impact of reduction in the current non-guaranteed factors of 25% and 50% on the concept.

(iv) Alternative scales include:

(I) mid-point and guaranteed scales; or

(II) the dividend component of the illustrated scale reduced by 50%; or

(III) the dividend and/or credited interest component of the illustrated scale reduced by 50% of the interest component of the illustrated scale in excess of policy guarantees.

(v) For purposes of this section, an extended numeric summary is the numeric summary set out in §21.2207(3) of this title (relating to Standards for Basic Illustrations) which also, under the assumptions shown, identifies items and events as set out in subclauses (I) through (III) of this clause, as follows:

(I) Suspension of Premium: the first policy year for which out-of-pocket premium is no longer required, and/or the number of policy years for which out-of-pocket premium is no longer required, and/or the number of policy years for which out-of-pocket premium is required.

(II) Cash Flow: the first policy year when cash flow ceases, and/or the number of policy years for which cash flow occurs.

(III) The assumed payments on which the illustrated benefits and values are based may be identified as premium outlay or contract premium, as applicable, or total outlay.

(vi) After January 1, 2001, a concept may not be presented using the option set out in clause (iii)(IV), of this subparagraph, nor may any alternative scale be used other than the mid-point and guaranteed scales unless the option set out in clause (iii)(IV), of this subparagraph and/or the alternative scales set out in clause (iv)(II) and (III), of this subparagraph are extended by Order of the Commissioner.

(vii) An illustration for a proposed policy under which an employer pays all or part of the premium or shares part of the benefits, such as a split dollar plan, or an illustration of executive bonuses or deferred compensation, is exempt from the requirements of this subsection.

(N) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(O) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

(P) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(Q) A disclaimer shall be set out conspicuously and in close conjunction to any depiction of non-guaranteed elements over a period of years and shall:

(i) identify those benefits and values which are not guaranteed;

(ii) identify the assumptions upon which the illustration is based;

(iii) disclose that the assumptions are not likely to continue unchanged for the years shown and that the assumptions are subject to change by the insurer;

(iv) state that actual results may be more or less favorable; and

(v) identify generally the factors which may affect future policy performance, such as death claims, investment earnings and overhead costs or make reference to the narrative which identifies these factors.

(R) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(S) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(T) If policy loans are illustrated on a guaranteed basis, interest charged must be calculated in accordance with provisions of clause (i) or (ii) of this subparagraph, as follows:

(i) at the highest numerical rate permitted under the terms of the contract; or

(ii) to the extent that the loan interest rate is guaranteed in the contract as a specific constant addition to the actual interest crediting rate used in the determination of guaranteed cash values, the interest charged may be determined by applying that constant addition to the guaranteed minimum interest rate.

(2) Prohibited conduct. When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives or agents shall not:

(A) represent the policy as anything other than a life insurance policy;

(B) use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(C) state or imply that the payment or amount of non-guaranteed elements is guaranteed;

(D) use an illustration that does not comply with the requirements of this Subchapter;

(E) use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

(F) provide an applicant with an incomplete illustration;

(G) represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

(H) use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;

(I) except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported;"

(J) use an illustration that is not "self-supporting;"

(K) use an illustration or the software supporting it unless the illustration and the supporting software have been approved by the insurer in accordance or consistent with §21.122 of this title (relating to System of Control and Home Office Approval of Advertising Material Naming an Insurer); or

(L) use an illustration on a policy not identified by the insurer as one to be marketed with an illustration.

(3) Interest rate for non-guaranteed elements; persistency bonuses. The interest rate used to determine the illustrated non-guaranteed elements shall not be greater than the lesser of the earned interest rate underlying the disciplined current scale or the interest rate for the currently payable scale. No illustration shall depict a persistency bonus, a specified additional amount or specified reduction in mortality costs or expenses in a specified policy year, after the first policy year, unless such bonus, additional amount or reduction is an express obligation of the insurer in the contract or policy and meets the lapse-support and self-supporting tests as required by this subchapter.

§21.2207. *Standards for Basic Illustrations.*

In addition to those matters set out in §21.2206 of this title (relating to General Rules and Prohibitions), the standards set out in paragraphs (1) through (4) of this subsection shall apply to a basic illustration.

(1) Format. A basic illustration shall conform with the following requirements:

(A) the assumed dates of payment receipt and benefit pay out within a policy year shall be clearly identified;

(B) the assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;

(C) guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;

(D) the guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements").

(2) Narrative summary. Excluding a cover page, a basic illustration shall begin with a narrative summary which shall include:

(A) a brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(B) a brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(C) a brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(D) identification and a brief definition of column headings and key terms used in the illustration; and

(E) A statement which:

(i) identifies those benefits and values which are not guaranteed;

(ii) identifies the assumptions upon which the illustration is based;

(iii) discloses that the assumptions are not likely to continue unchanged for the years shown and that the assumptions are subject to change by the insurer;

(iv) discloses that actual results may be more or less favorable; and

(v) identifies generally the factors which may affect future policy performance, such as death claims, investment earnings and overhead costs.

(3) Numeric summary. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable.

(A) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, 10 and 20 and at age 70, if applicable. For multiple life policies the summary shall show policy years five, 10, 20 and 30. The summaries required in this subparagraph shall be presented on the three bases set out in clauses (i) through (iii) of this subparagraph, as follows:

(i) policy guarantees;

(ii) insurer's illustrated scale; and

(iii) insurer's illustrated scale used but with the non-guaranteed elements reduced as set out in subclauses (I) through (III) as follows:

(I) dividends at 50% of the dividends contained in the illustrated scale used;

(II) non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(III) all non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(B) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases set out in subparagraph (A) of this paragraph.

(C) A statement substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or other owner in the case of illustration provided at the time of delivery, and the insurance producer or other authorized representative or agent: "A copy of this illustration has been provided to the applicant/policy owner."

(4) Tabular detail. Life insurance policy illustrations shall include, as applicable, the tabular detail set out in subparagraphs (A) through (C) of this paragraph.

(A) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(i) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(ii) The corresponding guaranteed death benefit, as provided in the policy; and

(iii) The corresponding guaranteed value available upon surrender, as provided in the policy.

(B) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(C) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

§21.2208. *Standards for Supplemental Illustrations.*

A supplemental illustration may be provided so long as it meets all standards set out in paragraphs (1) through (4) of this section, as follows:

(1) it is appended to, accompanied by or preceded by a basic illustration that complies with this Subchapter;

(2) the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(3) it conforms to §21.2206 of this title (relating to General Rules and Prohibitions); and

(4) for a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

§21.2209. *Delivery of Illustration and Record Retention.*

(a) Illustration delivery provisions. An illustration or revised illustration shall be delivered by the insurer as set out in paragraphs (1) through (4) of this subsection.

(1) Basic illustration delivery. If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy

is applied for as illustrated, a copy of that illustration signed in accordance with this rule shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(2) Revised illustration delivery. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this subchapter, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3) Certification required where no illustration is used. If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(4) Illustration to be provided with policy. If the policy is issued under facts and circumstances described in paragraph (3) of this subsection, a basic illustration conforming to the policy as issued shall be sent with the policy. A copy shall be provided to the insurer and the policy owner.

(b) Records retention. A copy of the basic illustration and a revised basic illustration, if any, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

§21.2210. *Annual Report; Notice to Policy Owners.*

(a) Annual report provision. If an illustration is used in the sale of a life insurance policy after the effective date of this Subchapter, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain, at a minimum, the applicable information set out in paragraphs (1) through (3) of this subsection.

(1) Universal life policies. For universal life policies, the report shall include:

(A) the beginning and end date of the current report period;

(B) the policy value at the end of the previous report period and at the end of the current report period;

(C) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);

(D) the current death benefit at the end of the current report period on each life covered by the policy;

(E) the net cash surrender value of the policy as of the end of the current report period;

(F) the amount of outstanding loans, if any, as of the end of the current report period; and

(G) for fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled

premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(H) for flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(2) Other life insurance policies. For all other policies, the report shall include, as applicable:

- (A) current death benefit;
- (B) annual contract premium;
- (C) current cash surrender value;
- (D) current dividend;
- (E) application of current dividend; and
- (F) amount of outstanding loan.

(3) Life insurance policies without nonforfeiture values. For life insurance policies that do not build nonforfeiture values, insurers shall only be required to provide an annual report with respect to these policies for those years when a change has been made to non-guaranteed policy elements by the insurer.

(b) Required policy owner notice. If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

(c) In-force illustration to be provided at policy owner request. Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of §21.2206(1) and §21.2206(2)(A) - (L) of this title (relating to General Rules and Prohibitions); and §21.2207(4) of this title (relating to Standards for Basic Illustrations). No signature or other acknowledgment of receipt of this illustration shall be required.

(d) Notice of change to non-guaranteed elements. If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

§21.2211. Annual Certification.

(a) Insurer to appoint illustration actuary. The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) Actuary certification. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the

NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this Subchapter.

(c) Illustration actuary qualifications and disclosures. The illustration actuary shall:

(1) be a member in good standing of the American Academy of Actuaries;

(2) be familiar with the standard of practice regarding life insurance policy illustrations;

(3) not have been found by the commissioner, following appropriate notice and hearing to have:

(A) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(B) been found guilty of fraudulent or dishonest practices;

(C) demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(D) resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(4) not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under paragraph (3) of this subsection;

(5) disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in-force policies are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and

(6) disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(A) fully allocated expenses;

(B) marginal expenses; or

(C) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner.

(d) Certification filing requirements. The illustration actuary shall file a certification with the commissioner prior to use of any illustration for a new policy form, and annually for all current policy forms for which illustrations are used.

(e) Notice of error. If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(f) Notice of inability to certify. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(g) Annual certification. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(1) that the illustration formats meet the requirements of this Subchapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) that the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (c)(6) of this section.

(h) Due date of certifications. The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(i) Notice of change in illustration actuary. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

§21.2212. Penalties.

Any violation of this subsection shall constitute a misrepresentation of the terms of an issued and unissued policy in violation of the Insurance Code, Article 21.21 §4 (1) and (2), and to be a misrepresentation of the terms, benefits, and advantages of a policy within the meaning of the Insurance Code, Article 21.20. Violations of this subsection shall subject the insurer and agent to the penalties provided in the Insurance Code, Article 21.21 and other applicable provisions of the Insurance Code.

§21.2213. Separability, Conflict with and Effect on Other Regulations.

(a) Separability. If any provision of this Subchapter or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the subchapter and its application to other persons or circumstances shall not be affected.

(b) Conflict with or effect on other rules. This subchapter is not intended to conflict with or supersede and is to be interpreted when possible as not to conflict with Chapter 21, subchapters A and B of this title.

§21.2214. Effective Date.

This subchapter shall apply to all policies sold on or after July 1, 2000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Lynda H. Nesenholtz

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Texas Department of Insurance

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

34 TAC §3.544

The Comptroller of Public Accounts adopts an amendment to §3.544, concerning reports and payments, without changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6144).

The subsection concerning consolidated reporting has been revised in accordance with Senate Bill 861, 75th Legislature, 1997. Provisions related to the filing of amended reports as a result of an audit by the Internal Revenue Service or other competent authority, or as a result of the filing of an amended IRS return or other return, including penalties, if applicable, have been revised in accordance with Senate Bill 861, 75th Legislature, 1997. The subsection concerning the signature requirement for the public information report has been revised in accordance with Senate Bill 861, 75th Legislature, 1997. A new subsection has been added to address an exception to the statute of limitations for a franchise tax liability that is affected by an Internal Revenue Service audit, in accordance with Senate Bill 862, 75th Legislature, 1997.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §§111.206, 171.203(d), and 171.212.

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 September 10, 1998.

TRD-9814349

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: September 30, 1998

Proposal publication date: June 12, 1998

For further information, please call: (512) 463-4062



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 18. Driver Education

Subchapter C. Department Approved Driver Education Courses

37 TAC §18.31

The Texas Department of Public Safety adopts an amendment to §18.31, concerning Department Approved Driver Education Courses, without changes to the proposed text as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6941).

The justification for this section will be a reduction in the cost of the Parent-Taught Driver Education Course by not having to purchase unnecessary textbooks.

Subsection (a) is amended to correct reference to statute due to the recodification of Texas Civil Statutes to Texas Transportation Code. Subsection (b) is amended to include an exemption to the requirement of a textbook.

No comments were received regarding adoption of the amendment

The amendment is adopted pursuant to Texas Transportation Code, §521.205 which provides the department by rule shall provide for approval of a driver education course conducted by the parent or legal guardian of a person who is required to complete a driver education course to obtain a Class C license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814195

Dudley M. Thomas

Director

Texas Department of Public Safety

Effective date: September 28, 1998

Proposal publication date: July 3, 1998

For further information, please call: (512) 424-2890



Part VI. Texas Department of Criminal Justice

Chapter 157. State Jail Felony Facilities

37 TAC §157.4

The Texas Department of Criminal Justice adopts an amendment to §157.4, concerning the Designation of Regions with changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8029). Under the Texas Government Code, §507.003 and §507.004, as added by Acts of the 73rd Legislature, 1993, the Texas Board of Criminal Justice is required to designate regions in the state for the purpose of providing regional state jail felony facilities and to adopt and enforce a regional allocation policy for the purpose of allocating the number of facilities and beds to each region.

After several years of experience it has been determined that the data used to devise the existing regions was not suitably predictive of the number of people coming from each region. This adoption is necessary based on new data received, in order to better serve the areas with a more appropriate allocation of facilities.

Adoption of the amendment enables a more appropriate allocation of facilities to areas that are to be served.

Two internal comments were received regarding adoption of the amendment, to the effect that the word "municipalities" should be "counties," and the lists of counties should be alphabetized. The proposal was changed to reflect these comments.

The amendment is adopted under the Government Code, §492.013, which grants general rulemaking authority; and Government Code, §507.003 and §507.004, which provides the Department with the authority to designate regions for allocation of admission to the State Jail Division.

§157.4. Designation of Regions.

(a) By law the board may not designate a region that subdivides a geographical area served by a community supervision and corrections department. The board may designate a region that contains only one judicial district if that district serves a municipality with a population of 400,000 or more. The board considers the following factors to be of significance in ensuring that community supervision and corrections departments are served as efficiently as possible:

(1) the number and size of counties being served by the community supervision and corrections departments;

(2) geographic distances between counties;

(3) the need for state jail felony facility capacity as determined by the anticipated number of defendants who will be required by a judge to serve a term of confinement in a state jail.

(b) Based on these factors and any other factors deemed relevant by the board, the board designates a total of nine regions in the state for the purpose of providing regional state jail felony facilities. The following tables list the nine regions and the counties to be served in each region.

Figure: 37 TAC §157.4(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 1998.

TRD-9814495

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: October 4, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 463-9593



Chapter 163. Community Justice Assistance Division Standards

37 TAC §163.39, §163.40

The Texas Department of Criminal Justice - Community Justice Assistance Division adopts an amendment to §163.39, concerning Residential Services and new §163.40, concerning Substance Abuse Treatment Standards. New §163.40 is adopted with changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7738). Section 163.39 is adopted without changes and therefore will not be published.

The Substance Abuse Treatment Standards for the Community Justice Assistance Division (CJAD) of the Texas Department of

Criminal Justice (TDCJ) have been developed, pursuant to the Government Code, §509.003(a)(5), to provide standards for the operation of programs and facilities administered or funded by TDCJ-CJAD.

The purpose of the Substance Abuse Program Standards is to establish clear, concise, and uniform principles which will be used as a means to measure performance for all substance abuse treatment programs that are administered or funded by TDCJ-CJAD. This will be accomplished by providing minimum standards to ensure consistent and auditable operational procedures for the continuum of services.

In the programs administered or funded by TDCJ-CJAD, the goals are to:

1. provide guidelines for quality substance abuse programming throughout the continuum of care;
2. provide comprehensive, quality substance abuse treatment services;
3. provide guidelines for evaluating programs and cost-effectiveness of substance abuse programs; and
4. promote coordination in the delivery of substance abuse services among the community supervision and corrections departments in the state as well as with the divisions of the TDCJ and the agencies it funds.

The objectives of the Substance Abuse Standards are to:

1. develop uniform minimum operational standards for substance abuse programs in the areas of Facility Management, Treatment Process, Offender Management, Program Services, and the Physical Plant;
2. establish a set of terms, definitions, and credentials for staff;
3. develop standards that will provide a framework for measurable outcomes of substance abuse programs; and
4. improve communication between service providers, divisions, and departments involving substance abuse services for criminal offenders.

The amendment and new section will promote consistent, effective, and cost efficient programs of high quality for offenders who are under community supervision (probation).

Two groups responded to the proposed changes in TDCJ-CJAD Standards: the Osteopathic Medical Association and the Texas Commission on Alcohol and Drug Abuse. The following committee of employees from the Texas Department of Criminal Justice reviewed the responses to the proposed changes: Todd Jermstad, Betty Jean Gonzales, Kirk Long, Bryan Wilson, Karen Caruth, and Steven Henderson. After the TDCJ committee reviewed and consulted with staff from the Texas Commission on Alcohol and Drug Abuse (TCADA) regarding the agency's recommendations, TCADA revised its comments and submitted a second list of comments and recommendations, which are addressed as follows.

A. The Osteopathic Medical Association (OMA) has responded to the proposed new §163.40. Substance Abuse Treatment Standards, by recommending an addition to subsection (a) Definitions, under the definition of (15) Qualified Credentialed Counselor.

The OMA has recommended the addition of another profession under the category of Qualified Credentialed Counselor; viz.,

licensed Osteopath (DO). After consulting with staff from the Texas Commission on Alcohol and Drug Abuse, who developed the definition for the Qualified Credentialed Counselor, staff from TDCJ made a decision to accept the suggested change. Consequently, it is being proposed that §163.40 (a)(15)(E) be amended to read as follows:

licensed physician (MD) or licensed osteopath (DO);

The change is being accepted because the professions of licensed physician and licensed osteopath have education, training and responsibilities that are similar

B. The Texas Commission on Alcohol and Drug Abuse (TCADA) has responded to the proposed new §163.40 Substance Abuse Treatment Standards with nine recommended changes.

1. TCADA has responded to §160.40(a) Definitions by recommending a change to the definition for paragraph (5) Counselor Intern. TCADA has recommended modifying the definition to read as follows:

A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor in accordance with rules adopted by the Texas Commission on Alcohol and Drug Abuse.

TCADA has recommended these changes because the proposed definition could result in unqualified individuals calling themselves "counselor interns" and practicing illegally.

TDCJ is accepting the modification of the definition for Counselor Intern in order to clarify the meaning of the term and to ensure that the definition does not cause confusion about who can be allowed legally to be called a counselor intern.

2. TCADA has responded to §160.40(a) Definitions by recommending a change to the definition for paragraph (12) Facility/Program.

TCADA has recommended modifying the definition by creating separate definitions for "facility" and "program." TCADA has commented that the proposed definition can cause confusion by equating the terms.

TDCJ is accepting the comment by TCADA that the proposed definition could cause confusion. Therefore, TDCJ is modifying the proposed definition as follows:

(12) Facility - The physical location of the treatment program operated by, for, or with funding from the TDCJ-CJAD. Some locations may be locked facilities for in-patient treatment; other programs may be offered at locations as outpatient treatment.

3. TCADA has responded to §160.40(a) Definitions by recommending a change to the definition for paragraph (18) Treatment.

TCADA has recommended modifying the definition as follows:

A planned, structured and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health,

or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

TCADA has recommended this change because the definition in the proposed Standard could cause some readers to equate the term "treatment" with "counseling." Because treatment includes a range of activities that includes components other than counseling, TCADA recommends the modification

TDCJ is accepting the recommendation by accepting the definition that TCADA has submitted.

4. TCADA has responded to §160.40(c) Personnel and Staff Development/Accreditation by recommending a change to the term, "counselor intern" that is used in the Standard.

TCADA has recommended modifying the definition by substituting the phrase "non-credentialed staff" in place of "counselor intern." The Standard would then read as follows:

Programs that are not clinical training institutions as defined by the Texas Commission on Alcohol and Drug Abuse must inform all non-credentialed staff of this fact.

TCADA has recommended this change because the technical, legal definition of "counselor intern" as established by TCADA does not include persons working outside a clinical training institute.

TDCJ acknowledges the comment from TCADA that the proposed Standard could cause confusion about the term "counselor interns," and therefore accepts the proposed change.

5. TCADA has responded to §160.40(f)(5) Assessment Procedures by recommending a change in the Standard to eliminate the phrase "or qualified evaluator."

TCADA has recommended a modification in the Standard to read as follows:

assessments completed by a Qualified Credentialed Counselor (QCC), or if the assessor is not a QCC, then the documentation must be reviewed and signed by a QCC.

TCADA has recommended this change because, by its Rules and Standards, only a qualified credentialed counselor can perform the task of conducting or reviewing/signing assessments.

TDCJ is accepting this modification because the Texas Code of Criminal Procedure, Article 42.12, Section 9(h) and Section (13)(a)(2) provides for evaluations that are separate from assessments. Therefore, the phrase "or qualified evaluator" is not needed in this Standard.

6. TCADA has responded to §160.40(t) Relapse/Residential Treatment by recommending the addition of two phrases to the Standard.

TCADA has recommended that the proposed Standard read as follows:

There shall be an appropriate number of direct care staff to provide all required program services, maintain a therapeutic environment that enhances treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source. The direct care staff-to-client ratio shall be at least 1:16 during the hours clients are awake.

TCADA has recommended this change from a concern that a minimum direct care staffing level needs to be established in residential services to have a positive effect on treatment

as well as client safety. In addition, TCADA recommends a clarification that duties of the direct care staff include treatment-related areas other than safety and security.

TDCJ is not accepting the recommendation for a specific client-to-staff ratio for the Standard. While it is agreed that appropriate staffing levels are necessary to provide all required program services and to provide an environment that is conducive to treatment, there are community corrections facilities whose designs do not necessarily require a specific offender-to staff ratio in order to promote an appropriate treatment environment that is safe and secure for the offenders. It is TDCJ-CJAD's position that direct care staffing levels are issues to be determined by contract or through the grant approval process. Therefore, TDCJ will only modify this Standard to include the phrases "to provide all required program services" and "to provide an environment conducive to treatment" so the proposed Standard will read as follows:

There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

7. TCADA has responded to §160.40(u), Primary Care/Modified Therapeutic Community Treatment by recommending the elimination of this Standard and using the Standard for Relapse/Intensive Residential Treatment.

TCADA recommends the use of the counselor caseload Standard (§160.40 (t)(2)) that reads as follows:

The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed ten offenders.

TCADA has recommended this change from a concern that the caseload size of 20 clients per counselor and the required number of hours of services per week in §160.40(u) will not allow counselors to provide adequate treatment to client-offenders.

TDCJ is not accepting this recommendation for a change in the caseload size or the number of hours of service. An error was made in the proposed Standard because an essential phrase was not included when the Standards were typed. TDCJ is recommending a change for the Standard to require only one hour of individual counseling per month for each offender, which is the current practice in TDCJ facilities. The nature of the Therapeutic Community modality allows larger caseloads for the number of service hours that are required, and the number of hours of individual counseling are not as great in the Therapeutic Community modality. Therefore, proposed §160.40(u)(7) should read as follows:

(7) The facility shall deliver not less than 20 hours of structured activities per week for each offender, including:

(A) ten hours of chemical dependency counseling, with no less than one hour of individual counseling per month; . . .

8. Regarding §160.40(u)(3), TCADA repeats its concern about direct care staff that it raised in recommendation (7).

TDCJ reiterates its position that while an environment conducive to treatment is necessary, the number of direct care staff in a residential facility is an issue that should be determined by

contract or through the grant approval process in accordance with the design of each facility. Therefore, TDCJ will only modify §160.40 (u)(3) as follows:

There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

9. TCADA has responded to proposed §160.40(y)(4), Residential Physical Plant Requirements by recommending the addition of a phrase to the Standard.

TCADA recommends the addition of the phrase "to provide a therapeutic environment" to the Standard so it will read as follows:

(4) An adequate amount of floor space must be provided per resident in the facility's sleeping area to provide a therapeutic environment and to meet the safety and security requirements of the facility.

TCADA has recommended this change in order to help ensure that there will be enough square footage sufficient to provide a therapeutic environment that enhances client dignity.

TDCJ is not accepting this recommendation for a change in this Standard because there are adequate provisions in current Standards (§163.39(c) (1)) to provide programming space that is sufficient to the missions of the facilities it funds. Sleeping areas do not need to be included in a Standard for the provision of a therapeutic environment since this is an issue that is subject to review in the contract and in the grant approval process.

In the time since TDCJ-CJAD replied to responses to the proposed changes in TDCJ-CJAD Standards §163.39 and §163.40, the Tarrant County Community Supervision and Corrections Department submitted an additional response. That response and TDCJ-CJAD's reply is listed as follows.

The Tarrant County Community Supervision and Corrections Department (CSCD) has responded to the proposed Substance Abuse Treatment Standards §163.40(u)(2) by recommending two changes: First, it proposed that staff in addition to a counselor be used in calculating caseloads for treatment. Second, it proposes an automatic exemption from the Standard if funds are not available to employ sufficient staff.

The Tarrant County CSCD has recommended these modifications of the proposed standard because the CSCD believes that its current staffing pattern of one counselor and one community supervision officer for every 30-35 offenders provides effective treatment for its population. Therefore, it is proposing the following wording for Standard §163.40(u)(2):

The program shall provide adequate staff for close supervision and treatment with staff average caseloads not to exceed 20 offenders. This Standard shall not be in effect if funds are not available to employ sufficient staff.

TDCJ is not accepting this proposed modification of the caseload size in the proposed §163.40(u)(2). The modification proposed by the Tarrant County CSCD does not delineate which members of the staff are to be used in the calculation of caseloads. Therefore, any member of the facility staff, regardless of credentials, training, or education, could be used in the calculation. It is the intent of these proposed standards

to ensure that qualified credential professionals are providing treatment to the offenders in substance abuse programs. This proposed modification does not maintain that goal. In addition, the provision of an exemption relating to funding for sufficient staff would be very difficult to define or regulate equitably because wages vary between regions in the state. Funding that would be sufficient to employ sufficient staff in one region would not necessarily be sufficient to employ sufficient staff in another region.

The amendment and new section are adopted under the Government Code, §509.003(a)(5), to provide standards for the operation of programs and facilities administered or funded by TDCJ-CJAD.

§163.40. Substance Abuse Treatment Standards.

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

(1) Admission - The administrative process and procedure performed to accept an offender into a treatment program or facility.

(2) Chemical Dependency Counselor - A qualified credentialed counselor or counselor intern working under direct supervision.

(3) Continuum of Care - A system which provides for the uninterrupted provision of essential services to offenders entering, exiting, and within the system.

(4) Counseling - Face-to-face interactions between offenders and counselors to help offenders identify, understand, and resolve their personal issues and problems related to their substance abuse or chemical dependency. Counseling may take place in groups or in individual meetings.

(5) Counselor Intern - A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor in accordance with rules adopted by the Texas Commission on Alcohol and Drug Abuse.

(6) Detoxification - Chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in an offender's body, manage withdrawal symptoms, and encourage the offender to continue ongoing treatment for chemical dependency.

(7) Direct Care Staff - The staff responsible for providing treatment, care, supervision, or other offender services that involve a significant amount of direct contact. (Clerical support staff are not considered direct care staff.)

(8) Discharge - The time when an offender leaves a program or facility and will no longer be receiving chemical dependency treatment from that program or facility.

(9) Discharge Summary - A recapitulation of the offender's progress and participation while in either primary, residential, or outpatient treatment.

(10) Education - Educational instruction; a planned, structured presentation of information which is related to substance abuse or chemical dependency.

(11) Emergency - A situation requiring immediate attention and action to treat or prevent physical, emotional, or mental threat, harm, injury, or illness.

(12) Facility - The physical location of the treatment program operated by, for, or with funding from the TDCJ-CJAD. Some locations may be locked facilities for in-patient treatment; other programs may be offered at locations as out-patient treatment.

(13) Grievance - A formal complaint limited to matters affecting the complaining offender personally and limited to matters for which the facility/program has the authority to remedy through the grievance process.

(14) Primary Counselor - An individual working directly with and being responsible for the treatment of the offender.

(15) Qualified Credentialed Counselor (QCC) - A licensed chemical dependency counselor (LCDC) or one of the following professionals:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician (MD) or licensed osteopath (DO);
- (F) certified addictions registered nurse (CARN);
- (G) licensed psychological associate; and
- (H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with specialty in psyche-mental health (APN-P/MH).

(16) Senior Counselor/Unit Manager/Unit Supervisor - A supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members.

(17) Special Needs Populations - Offenders who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs.

(18) Treatment - A planned, structured and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(19) Use of Force - Graduated levels of use of physical strength or weapons necessary to gain physical compliance and control of an offender whose actions otherwise pose a danger to self or others.

(b) Compliance. Compliance with TDCJ-CJAD substance abuse treatment standards is required of all programs that provide substance abuse treatment and are funded or managed by TDCJ-CJAD. Programs providing only substance abuse education are not subject to these standards.

(c) Personnel and Staff Development/Accreditation. The employer shall ensure that employees acquire any credentials, licensing, certifications, or continuing education required to perform their duties. Personnel files for employees shall be maintained to display copies of required documents. Programs that are not clinical train-

ing institutions as defined by the Texas Commission on Alcohol and Drug Abuse must inform all non-credentialed staff of this fact.

(d) Admissions. There shall be documentation of specific admission criteria and procedures. Offenders are eligible for substance abuse treatment programs:

(1) if the offender's needs are met by the treatment services provided by the program;

(2) if a court orders the offender into the program and the subsequent assessment indicates the need for treatment services; or

(3) if the program allows readmissions and the offender meets the admission criteria. For offenders who are placed in treatment programs who do not meet admission criteria, a mechanism or procedure shall be developed for offender removal. A review and justification explaining the reason(s) the offender does not meet admission criteria shall be required.

(e) Intake. There shall be written policies and procedures establishing an intake process for offenders entering a substance abuse treatment program.

(f) Assessment Procedures. Acceptable and recognized assessment tools (tests and measurements) shall be used in all substance abuse treatment programs. Assessment policies and procedures shall require the use of approved clinical measurements and screening tests. Assessment procedures shall include the following:

(1) identification of strengths, abilities, needs and preferences of the offenders served;

(2) indication of desired outcomes and expectations of offenders served;

(3) summarization and evaluation of each offender to develop individual treatment plans.

(4) specified time-frames for initial and on-going assessments;

(5) assessments completed by a Qualified Credentialed Counselor (QCC), or if the assessor is not a QCC, then the documentation must be reviewed and signed by a QCC.

(g) Assessments. The assessment shall include:

(1) a summary of the offender's alcohol or drug abuse history including substances used, date of last use, date of first use, patterns and consequences of use, types of and responses to previous treatment and periods of sobriety;

(2) family information, including substance use and abuse by family members and supportive or dysfunctional relationships;

(3) vocational and employment status, including skills or trades learned, work record and current vocational plans;

(4) health information, including medical conditions that present a problem or that might interfere with treatment;

(5) emotional or behavioral problems, including a history of psychiatric treatment; and

(6) a diagnostic summary signed and dated by the chemical dependency counselor, followed by a Licensed Chemical Dependency Counselor (LCDC) or Qualified Credentialed Counselor (QCC).

(h) Orientation. Each program shall establish written policies and procedures for the orientation process. Orientation shall be provided at the onset of treatment and in accordance with the level

of treatment to be provided. The orientation shall relay information necessary for offenders to be successful in treatment.

(i) Offender Rights. The offender's basic rights shall be respected and protected, free from abuse, neglect and exploitation. Each provider shall have written policy and procedure to ensure protection of the offender's rights according to federal and state guidelines.

(j) Release Of Information. There shall be written policies and procedures for protecting and releasing offender information that conforms to federal and state confidentiality laws. The staff shall follow written policies and procedures for responding to oral and written requests for offender-identifying information.

(k) Offender Records. There shall be written policies and procedures regarding the content of offender records. Case records shall include, at a minimum, the following information:

- (1) initial intake information form;
- (2) referral documentation;
- (3) case information from referral source, if applicable;
- (4) release of information forms;
- (5) relevant medical information;
- (6) case history and assessment;
- (7) individual treatment plan;
- (8) evaluation and progress reports;
- (9) discharge summary; and
- (10) court order placement of offender into the program, if applicable.

(l) Offender Records Review Policy. There shall be written policy and procedures to govern the access of offenders to their own substance abuse treatment records in accordance with Texas Health and Safety Code, §611.0045. This access does not apply to criminal justice records. Restrictions to access to treatment records shall be specified and explained to offenders upon request. Exceptions must involve the potential for harm to the offender or others.

(m) Treatment Planning and Review. Individual Treatment Plans will be developed in accordance with TDCJ-CJAD Standard §163.35(c)(5) of this title (relating to Supervision) on the Case Supervision or Treatment Plan, or through a similar process approved by the CSCD. Substance abuse treatment shall remain focused on the offender's success or lack of progress, and shall be reviewed at timely intervals at a minimum of once each month or when major changes occur (e.g., change in phase) and shall ensure:

- (1) that the primary counselor meets with the offender as needed to review the treatment plan, evaluating goal progress and revisions; and
- (2) that all revised treatment plans be signed and dated by the counselor and the offender.

(n) Treatment Progress Notes. There shall be written policies and procedures to require all programs to record and maintain progress notes on all offender case records, to document counseling sessions, and to summarize significant events that occur throughout the treatment process. Progress notes shall be documented at a minimum of once per week.

(o) Changes In Treatment Levels. Each treatment program shall develop written criteria for an offender to advance or regress

from a level of treatment. An offender must meet the criteria for a change in the level of treatment before such a change or a discharge is implemented.

(p) Discharges From Treatment. Discharge from a program shall be based on the following criteria:

(1) the offender has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(2) the offender has satisfied a sentence of confinement;

(3) the offender has satisfied a period of placement as a condition of community supervision;

(4) the offender has demonstrated non-compliance with the program criteria or court order;

(5) the offender manifests a medical problem that prohibits participation or completion of the program requirements;

(6) the offender displays symptoms of a psychological disorder that prohibits participation or completion of the program requirements; or

(7) the offender is identified as inappropriate or ineligible for participation in the program as defined by facility eligibility criteria, statute, or standard.

(q) Discharge Summary. A discharge summary shall be prepared by the primary counselor for each offender leaving any substance abuse program. The discharge summary shall provide a summation of:

(1) clinical problems at the onset of treatment and original diagnosis;

(2) the problems or needs, strengths or weaknesses identified on the master treatment plan;

(3) the goals and objectives established;

(4) the course of treatment;

(5) the outcomes achieved; and

(6) a continuum of care plan/aftercare treatment plan.

(r) General Program Services Provisions. Specific services shall be required of all substance abuse treatment programs. Written policy and procedures shall ensure the following:

(1) All substance abuse services shall be delivered according to a written treatment plan.

(2) All programs shall employ a Qualified Credentialed Counselor as the Program Director, Clinical Director, Senior Counselor, or the counselor in a similar supervisory position.

(3) The program shall include culturally diverse curriculum applicable to the population served. This shall be accomplished through demonstrated, appropriate counseling and instructional materials.

(4) Members of the offender treatment team shall demonstrate effective communications and coordination, as evidenced in staffing, treatment planning and case-management documentation.

(5) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:

- (A) conformity with state regulations;

(B) documentation of the administration of medications, medication errors, and drug reactions.

(6) Chemical dependency education shall follow a course outline that identifies lecture topics and major points to be discussed.

(7) The program shall provide education about the health risks of tobacco products and nicotine addiction.

(8) The program shall provide HIV education based on the Model Workplace Guidelines for Direct Service Providers developed by the Texas Department of Health.

(9) Offenders shall have access to HIV counseling and testing services directly or through referral.

(A) HIV services shall be voluntary, anonymous, and not limited by ability to pay.

(B) Counseling shall be based on the model protocol developed by the Texas Department of Health.

(C) In all TDCJ-CJAD funded facilities, testing, as well as pre- and post-test counseling, is to be provided by the medical department or contracted medical provider. In all facilities, service shall be provided either directly or through referral.

(10) The program shall make testing, as well as information, for tuberculosis and sexually transmitted diseases available to all offenders, unless the program has access to test results obtained during the past year.

(A) Services may be made available directly or through referral.

(B) If an offender tests positive for tuberculosis or a sexually transmitted disease, the program shall refer the offender to an appropriate health care provider and take appropriate steps to protect offenders and staff.

(C) A community corrections facility shall report to the local health department the release of an offender who is receiving treatment for tuberculosis.

(11) The program shall:

(A) refer pregnant offenders who are not receiving prenatal care to an appropriate health care provider and monitor follow-through; and

(B) refer offenders to ancillary services necessary to meet treatment goals.

(s) Detoxification. Written policies and procedures shall ensure the following.

(1) All offenders admitted to Detoxification programs shall need detoxification.

(2) Every offender shall have a completed medical history and physical.

(A) Residential offenders shall have a completed physical and medical history and a physical within 24 hours of admission. If the facility cannot meet this deadline because of exceptional circumstances, the circumstances shall be documented in the offender record. Until an offender's medical history and physical is complete, staff shall observe offenders closely (no less than every 15 minutes) and monitor vital signs (no less than once each hour).

(B) Outpatient offenders shall have the medical history and physical completed before admission.

(3) The program shall provide continuous supervision for offenders.

(A) In residential programs, direct care staff shall be awake and on site 24 hours a day.

(i) During day and evening hours, at least two awake staff shall be on duty for the first 12 offenders, with one more person on duty for each additional one to 16 offenders.

(ii) At night, at least one awake staff member shall be on duty for the first 12 offenders, with one more person on duty for each additional one to 16 offenders.

(B) In outpatient programs, direct care staff shall be awake and on site whenever an offender is on site. Offenders shall have access to on-call staff 24 hours a day.

(4) If the program accepts offenders with acute detoxification symptoms or a history of acute detoxification symptoms, the program shall have:

(A) a licensed vocational nurse or registered nurse on duty during all hours of operation;

(B) a physician on-call 24 hours a day.

(5) Level of observation shall be based on medical recommendations and program design, or not less than that described in paragraph (2) (A) of this subsection.

(6) A physician shall approve all medical policies, procedures, guidelines, tools, and forms, which shall include:

(A) screening instruments (including a medical risk assessment) and procedures;

(B) treatment protocol or standing orders for each chemical the program is prepared to address in detoxification; and

(C) emergency procedures.

(7) The clinical supervisor shall be a physician, physician assistant, advanced practice nurse, or registered nurse.

(8) The program shall:

(A) ensure continuous access to emergency medical care;

(B) provide offenders access to mental health evaluation and linkage with mental health services when indicated;

(C) use written procedures to encourage offenders to seek appropriate treatment after detoxification.

(9) Direct care staff shall complete detoxification training provided by a physician, physician assistant, advanced practice nurse, or registered nurse that includes instruction in the following areas:

(A) signs of withdrawal;

(B) pregnancy-related complications (if the program admits females of child-bearing age);

(C) observation and monitoring procedures;

(D) appropriate intervention; and

(E) complications requiring transfer.

(10) Staff shall assist each offender in developing an individualized post-detoxification plan that includes appropriate referrals.

(t) Relapse/Intensive Residential Treatment. Written policies and procedures shall ensure the following.

(1) All offenders admitted to relapse intensive residential treatment shall be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed ten (10) offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding sources.

(4) Counselors shall complete a comprehensive offender assessment within three working days of admission.

(5) An individualized treatment plan shall be completed for all offenders within five working days of admission.

(6) The facility shall deliver not less than 20 hours of structured activities per week for each offender, including:

(A) ten (10) hours of chemical dependency counseling, with no less than one hour of individual counseling;

(B) seven hours additional education, counseling, life skills, or rehabilitation activities; and

(C) three hours of structured social or recreational activities.

(7) Counseling and education schedules shall be submitted to the funding entity for approval.

(8) Each offender shall have an opportunity to participate in physical recreation at least weekly.

(9) Program staff shall offer chemical dependency education or services to identified significant others.

(10) The program shall provide each offender with opportunities to apply knowledge and practice skills in a structured, supportive environment.

(11) If the program utilizes a Modified Therapeutic Community modality of treatment it shall include the following as minimal components:

(A) a Structure Board;

(B) encounter, counseling and family groups;

(C) utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2, to Phase 3, by meeting objectives and program goals);

(D) graduated treatment sanctions for incidents of non-compliance in coordination with the Transitional Treatment Team; and

(E) other peer-support groups.

(u) Primary Care/Modified Therapeutic Community Treatment. Written policies and procedures shall ensure the following.

(1) All offenders admitted to modified therapeutic community treatment shall be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed 20 offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

(4) Counselors shall complete a comprehensive offender assessment within five working days of admission for all offenders admitted to a therapeutic community program.

(5) An individualized treatment plan shall be completed for all offenders within seven working days of admission.

(6) Length of stay shall be offender-driven based upon:

(A) the offender's successful completion of treatment goals;

(B) medical and psychological appropriateness for the program;

(C) the offender's compliance with the programs rules and regulations.

(7) The facility shall deliver not less than 20 hours of structured activities per week for each offender, including:

(A) ten (10) hours of chemical dependency counseling, with no less than one hour of individual counseling per month;

(B) seven hours additional education, counseling, life skills, or rehabilitation activities; and

(C) three hours of structured social or recreational activities.

(8) Counseling and education schedules shall be submitted to the funding entity for approval.

(9) Each offender shall have an opportunity to participate in physical recreation at least four hours per week.

(10) Program staff shall offer chemical dependency education or services to identified significant others.

(11) The program shall provide each offender with opportunities to apply knowledge and proactive skills in a structured, supportive environment.

(12) All Therapeutic Communities shall have the following as minimal components:

(A) a Structure Board;

(B) encounter, counseling, and family groups;

(C) Utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2, to Phase 3, by meeting objectives and program goals);

(D) graduated treatment sanctions for incidents of non-compliance in coordination with the Transitional Treatment Team; and

(E) other peer-support groups.

(v) Community Residential Treatment. Written policies and procedures shall ensure the following.

(1) All offenders admitted to intensive residential treatment shall be medically stable, able to function with limited supervision and support, and be able to participate in work release or community service/restitution programs.

(2) The program shall have adequate staff to meet treatment needs within the context of the program description, with counselor caseloads not to exceed 16 offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders, according to the design of the facility and with the approval of the funding.

(4) Counselors shall complete a comprehensive offender assessment and treatment plan within five working days of admission for all offenders.

(5) The facility shall deliver no less than ten hours of structured activities per week for each offender, including at least five hours of chemical dependency counseling.

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(8) If the program utilizes a Modified Therapeutic Community modality of treatment, it shall include the following components:

(A) a Structure Board;

(B) encounter, counseling and family groups;

(C) utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2, to Phase 3, by meeting objectives and program goals);

(D) graduated treatment sanctions for incidents of non-compliance in coordination with the Transitional Treatment Team;

(E) other peer-support groups;

(F) counselor caseloads not to exceed 20 offenders per counselor; and

(G) programming of no less than four hours of chemical dependency counseling and four hours of structured activities per week.

(w) Outpatient Treatment. Written policies and procedures shall ensure the following.

(1) All offenders admitted to outpatient programs shall be medically stable, and have appropriate support systems in the community to live independently with minimal structure.

(2) The program shall have adequate staff to provide offenders support and guidance to ensure effective service delivery, safety, and security. Staffing patterns shall be submitted to the funding entity.

(3) The program shall set limits on counselor caseload size to ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented and approved by the funding entity.

(4) Didactic groups shall not exceed 30 offenders in a group.

(5) Therapeutic groups shall not exceed 16 offenders in a group.

(6) For offenders in supportive outpatient programs, counselors shall complete a comprehensive offender assessment within 30 calendar days of admission for all offenders.

(7) For offenders in intensive outpatient programs, counselors shall complete a comprehensive offender assessment within ten calendar days of admission for all offenders.

(8) Intensive outpatient programs shall deliver no less than ten hours of structured activities per week for each offender, including at least five hours of chemical dependency counseling.

(9) Supportive outpatient programs shall deliver no less than two hours of structured activities per week for each offender, including at least one hour of chemical dependency counseling.

(10) Counseling and education schedules shall be submitted to the funding entity for approval.

(11) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(x) Special Populations. Written policies and procedures shall ensure the following.

(1) Programs that address the special mental health, intellectual capacity, or medical needs of offenders must provide appropriate treatment either by program staff or through contracted services.

(2) Admission to a special needs program must be based on a documented mental health, intellectual capacity, or medical need.

(3) When the assessment process indicates that the offender has coexisting disabilities/disorders, the Treatment Plan shall specifically address those issues that might impact treatment, recovery, relapse, and or recidivism.

(4) Personnel shall be available who are qualified in the treatment of coexisting disabilities/disorders.

(5) Within 96 hours of admission to a special needs residential program, offenders shall be administered a medical and psychological evaluation.

(6) Within ten days of admission to a residential program for special needs offenders, the program administrator or designee shall contact the Texas Council on Offenders with Mental Impairments (TCOMI) regarding the offender's status and plans for a continuum of care after discharge, regardless of whether or not the discharge is for successful completion of the program.

(7) Residential facilities providing services for special needs populations shall have procedures to provide access to health care services, including medical, dental, and mental health services, under the control of a designated health authority. When this authority is other than a physician, final medical judgments must rest with a single designated responsible physician licensed by the state.

(A) Services/treatment shall be directed toward maximizing the functioning and reducing the symptoms of offenders.

(B) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:

(i) conformity with state regulations;

(ii) documentation of the rationale for use and goals of service/treatment consistent with the individual plan of treatment;

(iii) documentation of the administration of medications, medication errors, and drug reactions;

(iv) procedures to follow in case of emergencies.

(8) There shall be procedures for documenting the offender has been informed of medication management procedures.

(9) Offenders shall be actively involved in decisions related to their medications.

(10) Programs for special needs offenders must follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than 16 offenders for each counselor.

(11) Programs operating in residential facilities shall ensure that offenders will have no less than ten days of appropriate medication for use after discharge.

(y) Residential Physical Plant Requirements. Facilities (Physical Plants) providing substance abuse treatment to offenders shall have written policies and procedures to ensure the following.

(1) The physical plant shall be located either within a mile of public transportation or other means of available transportation.

(2) There must be documentation indicating that ventilation conforms with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 62 and ASHRAE Standard 55 requiring 20 CFM per person minimum outside air and ventilation for each occupant or facility sleeping quarters. The facility/sleeping quarters must also meet Smoke Management Standards 92A, 92B and 204M established by the National Fire Prevention Association (NFPA). Consultation with trade associations specializing in the area of ventilation can provide alternative methods of mechanical ventilation if windows are absent or not operable. Documentation for meeting proper ventilation requirements can be obtained through a local public health agency, an engineering consultant, or a trade association such as the American Society of Heating, Refrigeration and Air-Conditioning Engineer, Inc.

(3) There must be documentation that all sleeping quarters have lighting of at least 20 foot-candles in reading and grooming areas. Sleeping quarters shall be safe and provide the resident with adequate lighting which is conducive to reading and grooming.

(4) An adequate amount of floor space must be provided per resident in the facility(ies) sleeping area to meet the safety and security requirements of the facility.

(5) In the sleeping area, each resident must be provided at a minimum: a bed, mattress and pillow; supply of bed linen; and closet/locker space for the storage of personal items.

(6) Private counseling space with adequate furniture must be provided in the facility.

(7) Space and furnishings for activities such as group meetings and visits shall be provided in the facility.

(8) At a minimum, the facility shall have one operable toilet for every eight residents or increment thereof as approved by funding entity. Urinals may be substituted for up to one-half of the toilets in male-populated facilities.

(9) At a minimum, the facility shall have one operable wash basin with temperature controlled hot and cold running water for every eight residents, or as approved by the funding agency.

(10) At a minimum, the facility shall have one operable shower or bathing facility with temperature controlled hot and cold

running water for every twelve residents or as approved by funding entity. The water shall be thermostatically controlled to temperatures ranging from 100 to 108 degrees Fahrenheit to ensure the safety of residents.

(11) The facility shall have the ability to handle the laundry needs on a daily basis for all residents.

(12) Facilities of more than 200 residents shall be subdivided into units of not more than 60 residents, each of which are staffed with the number and variety of personnel required to provide the program services and custodial supervision needed based on contractual requirements. Units with 50 or fewer residents shall be permitted to conduct manageable, scaled programs based on decisions by facility management and contractual requirements.

(13) Resident population shall not exceed the rated space of the facility. The original facility plan shall be examined to determine its rated bed capacity. If remodeled since original construction, the latest blueprints or plans for each resident housing shall be used.

(14) When males and females are housed in the same facility, there shall be separate sleeping quarters with adequate supervision.

(15) There shall be identifiable exits in each housing area and other high density areas to permit the prompt evacuation of residents and staff under emergency conditions as approved by the local or state fire inspector/Marshall having jurisdiction.

(16) Where applicable, there shall be a separate day room (leisure time space) for each housing unit, and an outside recreation area shall be provided.

(17) There shall be a visiting room or area for contact visitation which is adequate to meet the needs and size of the facility.

(18) Space must be provided for administrative, custodial, professional, and clerical staff.

(19) Preventative maintenance of the physical plant which provides for emergency repairs or replacements in life threatening situations shall be documented and conducted on a timely and routine basis.

(20) There shall be documentation by a qualified source that the interior finishing material in resident living areas, exit areas, and places of public assembly are in accordance with applicable local ordinances or state laws as certified by the local or state fire inspector/marshall having jurisdiction.

(21) Exits in the facility must be in compliance with either state or local fire safety authorities.

(z) Special Physical Plant Provisions. There shall be written policy and procedures to ensure access for handicapped residents in a manner which provides for their safety and security. In accordance with the Americans with Disabilities Act (ADA), areas of the facility which are accessible to the public shall be also accessible to handicapped staff and visitors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Carl Reynolds

General Counsel
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter G. Resources

40 TAC §3.704

The Texas Department of Human Services (DHS) adopts amendments to §3.704 and §3.902 in its Income Assistance Services chapter. The amendments are adopted without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8031) and will not be republished.

The justification for the amendments is to comply with an agency initiative and the Program Simplification Workgroup relating to simplification of the lump sum payments policies in the Temporary Assistance for Needy Families (TANF) program, and to add policy to TANF as a result of increased national and statewide interest in the establishment of a new concept known as Individual Development Accounts (IDAs).

The amendments will function by allowing the private sector an opportunity to participate in welfare reform through IDAs, and where feasible (and without being more restrictive), TANF policies will be made compatible with the current Food Stamp policies.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

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-9814173
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

Subchapter I. Income

40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 11. Food Distribution and Processing

Subchapter A. Food Distribution Program

40 TAC §11.105

The Texas Department of Human Services (DHS) adopts amendments to §11.105 and §11.6009, without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (24 TexReg 7746).

The United States Department of Agriculture has mandated the reduction in the time frames for submitting an audit in accordance with the requirements of the Single Audit Act, as amended, from 13 months to nine months from the end of the contractor's fiscal year. The revised time frame is effective for contractor fiscal years beginning on or after July 1, 1998. The justification for the amendments is to reduce the number of advance notifications to contractors reminding them of audits due from three advance notices to two. The amendments are necessary to accommodate the mandated reduction in the time frame for submitting an audit as contained in the Single Audit Act, as amended.

The amendments will function by enhancing program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act, as amended.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. The Texas Commodity Assistance Program (TEXCAP)

40 TAC §11.6009

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 12. Special Nutrition Programs

The Texas Department of Human Services (DHS) adopts amendments to §§12.24, 12.121, 12.209, 12.309, and 12.409, without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (24 TexReg 7749).

The United States Department of Agriculture has mandated the reduction in the time frames for submitting an audit in accordance with the requirements of the Single Audit Act, as amended, from 13 months to nine months from the end of the contractor's fiscal year. The revised time frame is effective for contractor fiscal years beginning on or after July 1, 1998. The justification for the amendments is to reduce the number of advance notifications to contractors reminding them of audits due from three advance notices to two. The amendments are necessary to accommodate the mandated reduction in the time frame for submitting an audit as contained in the Single Audit Act, as amended.

The amendments will function by enhancing program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act, as amended.

No comments were received regarding adoption of the amendments.

Subchapter A. Child and Adult Care Food Program

40 TAC §12.24

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Scott

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Subchapter B. Summer Food Service Program

40 TAC §12.121

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Special Milk Program

40 TAC §12.209

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. School Breakfast Program

40 TAC §12.309

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Scott

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Subchapter E. National School Lunch Program

40 TAC §12.409

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements §§22.001-22.030 and §§33.001-33.024 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Scott

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Chapter 92. Personal Care Facilities

Subchapter C. Standards for Licensure

40 TAC §92.51, §92.53

The Texas Department of Human Services (DHS) adopts new §§92.51 and 92.53 with changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6158). The new sections were erroneously proposed under Subchapter B, Application Procedures, and are being correctly adopted under Subchapter C, Standards for Licensure.

Justification for the new sections is to protect the public and residents of Alzheimer's personal care facilities through the establishment of an Alzheimer's certification process, which will ensure that personal care facilities which advertise Alzheimer care are, in fact, delivering care above and beyond that provided by a regular personal care facility. Selecting a facility will be easier for consumers because of the requirement for a disclosure statement which provides information on all aspects of the operation of the facility. The quality of care provided to residents of Alzheimer's personal care facilities will be enhanced through requirements for staff training regarding Alzheimer's disease and related disorders, an extensive activities program, an activities director, an outdoor recreation area, and special security measures.

The new sections will function by implementing House Bill 2510, passed by the 75th Legislature. The rules establish an Alzheimer certification process which is mandatory for any personal care facility which advertises, markets, or otherwise promotes that it provides specialized care for persons with Alzheimer's disease or related disorders.

The department received comments from three individuals representing personal care providers. A summary of the comments and the department's responses follow.

Comment: I have numerous concerns as to the contents of the DHS's form for the disclosure statement. As background, Texas law provides that a facility may not make specific misrepresentations regarding the services it offers and may not make express warranties for services which it does not provide, but a facility has always been allowed to choose whether it makes certain specific representations or warranties as to any of its services. In contrast, the proposed disclosure statement would force a facility to make specific representations regarding its services. No other industry in the State of Texas is so regulated in this regard. Such a required disclosure is particularly onerous due to the potential for misunderstanding of the responses and the potential for penalties of treble damages under the Deceptive Trade Practices Act for misrepresentations.

Response: The department does not concur. The department is not asking facilities to make misrepresentations about services they offer or make express warranties for services they cannot provide. The purpose of the disclosure statement is to provide information to consumers so they can better compare facilities and make more informed choices when placing a family member in an Alzheimer's personal care facility. A precedent for such a disclosure statement has been set with the Alzheimer's nursing facility disclosure statement, and the

department feels secure in our ability to require a similar statement for Alzheimer's personal care facilities.

Comment: The disclosure statement demands specific responses that—as with any dynamic situation—will be obsolete as soon as it is written. The proposed statement does not allow for flexibility and response to a changing environment. As structured, the statement requires specificity as to services which may or may not be offered in any given time period. For example, a facility could diligently seek to provide barber/beautician services, but the provider of these services could quit frequently and, for whatever reason, be difficult to replace. Such a situation would invalidate the statement; and, under the proposed rules, require an updated application (§92.51(c)(2)). (Actually the statement is obsolete the minute the barber quits or does not show up for appointments on any given day.) This same analysis applies to the statements about structured activities, scheduled programs, the person who assists with/administers medications, special provisions for aging in place, the staff person who gives the training, how much on-going training is given, the volunteer groups involved with the facility, etc.

Response: The commenter is correct that the statement requires an update when conditions change; however, the department sees this as a boon to consumers and not an unreasonable requirement for providers. The statement is general enough in nature that changes should not occur on a frequent basis.

Comment: Parts of the disclosure statement are confusing, vague, and ambiguous, and the quality of the response will depend on the reader's interpretation of the question. In addition, any word in the rules and the disclosure statement that can be misconstrued or conveys different connotations to different people just creates confusion and should be avoided (for example, "normal staffing patterns" and "special services").

The form does not effectively provide for explanation or equivocation as to the matters requested. Especially problematic are the questions regarding staffing, and the requirements of an activity director and activities program, as well as staff training. For example, the request for a "normal" staffing pattern. This requires an unequivocal response without consideration for resident population, census, or acuity levels. An addendum does not solve the problem, because it only provides opportunity to explain a specific response.

Although I understand the intent that the disclosures help to inform the public, I think that it will not effectively accomplish this goal. I suggest a different methodology altogether of creating a brochure that informs potential residents in a general fashion of the basic law, and of the differences between assisted living care and nursing home care. It could go further and suggest basic areas of discussion with the facility, e.g., typical staffing. But, as previously stated, I think that to require a facility to unequivocally respond to these questions—even with the opportunity for an "addendum"—only creates problems for residential care facilities without any corresponding benefit to a consumer. In my experience, the Rental or Admission Agreements of personal care facilities deal effectively with many of the issues addressed in the disclosure statement in that they typically disclose that the facilities are not nursing homes, plainly state the physical eligibility requirements for the residents, and clearly explain the services which are provided under the agreement.

Response: The department agrees that the disclosure statement does not provide for explanation because of the checklist design. The department expects that facilities will take the time to explain the contents of the disclosure statement and elaborate on their facilities' services. The design is intended to make it easier for the public to compare facilities and the services offered. The commenter's suggestion of a brochure would result in another marketing tool, in which each facility put its best foot forward, making it difficult for consumers to readily distinguish one facility's services from another.

Comment: The proposed statement does not allow for flexibility and response to the needs of different residents. For example, the statement requires specificity as to "behaviors/conditions that could prohibit admission." Depending on your interpretation of that disclosure, any of the listed conditions could, within the realm of possibility, prohibit a resident's admission; likewise, in certain situations, a facility might admit a resident who had all of the problems/conditions listed. Further, it will be impossible for a facility to anticipate all of the possible problems which should be listed under "other." Also problematic is the potential that a resident would rely on the disclosure as representing that certain types of (other) residents would not be admitted.

I want to emphasize that some of the questions/statements, as currently worded, cannot be answered so as to avoid a potential litigation problem for a facility. The first statement requiring the listing of behaviors/conditions that could prohibit admission is an example.

Under the Fair Housing Amendments Act of 1988 ("FHAA"), a residential care facility is prohibited from discrimination in the sale or rental of "dwellings" on the basis of a disability (and all of the listed behaviors/conditions could be considered a disability). In contrast, under the rules, a facility cannot admit a resident who is unable to evacuate appropriately (under 40 TAC §90.4). A facility increases its risks of litigation no matter how it answers this question. If a facility checks any or all of these conditions, it may appear to violate the FHAA. If it states none of the conditions could prohibit admission, it appears to violate the regulations. Any answer is problematic.

If the facility is sued for either alleged violation, the statement is a problem, because it is ambiguous and will be used against the facility. Having to explain such a document in litigation dramatically increases the costs of litigation. What is ridiculous about this situation is this question fails to inform a potential resident of the law in either situation. It does not clearly or accurately apprise the public of the law or the facility's application of the law. In fact, no response could effectively describe any facility's application of the law, because it is so fact specific.

As a solution, I would urge the department NOT to require a Disclosure Statement. Nonetheless, if the Department decides to require one, then—at a minimum—delete the above question. The problem would be partially eliminated if the Department would simply affirmatively state that a resident can not be discriminated against because of a disability, but that any condition or behavior that makes it impossible for a resident to evacuate a facility in the appropriate amount of time will prohibit the resident's admission to the facility. In fact, I urge the Department to redraft and clarify the Form Disclosure Statement as a whole.

Response: The department concurs with the commenter's concern about the statement asking the behaviors that would pro-

hibit admission, and in response to comment, the department is changing the portions of the disclosure statement regarding behavior or conditions which would prohibit admission or require discharge. In their places, the department will require facilities to list the services offered by the facility. Although the focus of the areas will be different, the information provided to the consumer will be similar.

Comment: From a litigation perspective, I have additional concerns about requiring disclosure statements. I further anticipate that plaintiffs' attorneys will attempt to use the disclosure statements to create the appearance of a "standard of care" or professional standard in the personal care industry. As the rules state, the statements are available to anyone who requests one of the facility. If I had a lawsuit against a personal care facility and I wanted to create a "standard" in the industry for staffing, I would go to as many facilities as possible and obtain a disclosure statement. Remember, "normal" staffing patterns are reflected in the statements. If staffing numbers are similar in many facilities (which I warrant they are), then I would argue the statements reflect a standard for the industry; and, if the facility in question did not have similar staffing, then it fell below the standard of the industry. Likewise, it could be argued that, if the facility in question did not meet the "standard," then it is negligent. That is the way evidence is created, and a disclosure statement will simply provide another vehicle for doing so. This is a defense attorney's nightmare, because the disclosure statement invites comparisons between facilities which may be inherently different and which may not adequately explain the basis for their responses, such as acuity of residents, resident population, and availability of appropriate staff for hiring.

Response: The department does not concur. The disclosure statement does not establish an industry standard. As stated by the commenter, facilities are inherently different due to variations in physical plants (age of building, design, electronic systems) and numbers and needs of residents. Such variations would make it difficult to set a single standard of care. In addition, no standards exist for the treatment of residents with Alzheimer's disease.

Comment: I question the validity of any form disclosure statement that is not published in the *Texas Register*. The Administrative Procedure Act provides that, a state agency must give at least 30 days' notice of its intention to adopt a new rule. The notice must include the text of the proposed rule, as well as a brief explanation of the rule. Also, prior to rule adoption, the agency must allow an official comment period during which all interested persons are given an opportunity to submit data, views, or arguments, orally or in writing. It would seem that, if the proposed rule does not give actual notice of critical provisions of the rule the contents of the disclosure statement that it would be procedurally invalid under the act. Therefore, it would seem to me that the public is entitled to notice of the contents of the disclosure statement along with the notice of the rule requiring such a disclosure. It is also frightening to me that, because the disclosure can be rewritten, it is subject to becoming even more onerous.

Response: The department does not concur. Departmental forms are not published in the *Texas Register* unless required by law. However, in response to comment, the department has amended §92.51(c)(2) to include the categories covered by the disclosure statement, so that providers and the general public

will be informed about the information contained in a disclosure statement.

Comment: The Disclosure Statement which accompanies the new standards creates, in my opinion, multiple issues for providers. Marketing tours would need to be approached as a formal legal event. The casual tour of one of our buildings on a Saturday evening for a family who is interested in having their loved one become a resident would most likely not be recommended by our attorney. This would be prohibited because the 20-year-old part-time staff member would not understand that some simple comment regarding one of the questions on the Disclosure Statement could be taken as the basis of a law suit. Even though that staff member is an excellent employee who loves and provides quality care to our residents, she is not prepared to represent our company in explaining a legal document.

The Disclosure Statement is a legal document. Yet, we are to "Provide copies or explain the Disclosure Statement to anyone who requests information about your facility." It does not limit the providing of copies and explanation to certain hours of the day. We are required by rules and regulations to provide the Disclosure Statement on demand, 24 hours a day.

Please consider removing the requirement for Disclosure Statements completely. If not removed, put some limits on when they can be demanded and explained. It is unfair for the Alzheimer's facility to be required to have a legal staff on duty seven days a week, 24 hours a day. This document will put all providers on the defensive and that is not the intent of the legislation or the rules and regulations.

Response: The department does not concur. The rules do not require the distribution of the Disclosure Statement on demand, 24 hours a day. The Disclosure Statement must be distributed to individuals seeking information about the facility's services, and the facility is in control of when they meet with individuals to discuss their services

Comment: The proposed standard requires that the facility be licensed as a Type B. I would submit that the Life Safety Code allows Small Type A facilities to keep "impractical" residents if the building is protected throughout by an approved supervised automatic sprinkler system complying with NFPA 13D provided all habitable areas and closets are sprinklered. For that reason, I think that small Type A facilities should be allowed to be certified under this standard in addition to Type B's. There is no reason to require a higher standard than is required by the Life Safety Code.

Response: The Life Safety Code (NFPA101) does not mention "small Type A" facilities, and therefore, does not "allow small Type A facilities to keep 'impractical' residents if the building is protected throughout by an approved supervised automatic sprinkler system." The Life Safety Code requires all small facilities housing "impractical" residents to be sprinklered (NFPA 101 21-2.3.5.2). The standards do not require a higher standard than the Life Safety Code. The standards do recognize that facilities housing Alzheimer's residents must meet the level of fire safety required for "impractical" residents.

Comment: Delayed egress locks are a significant hazard in a secured Alzheimer's environment. The proposed standards need to clearly prohibit delayed egress locks for exit doors on secured units. Otherwise, battles will have to be fought constantly with local jurisdictions over this issue.

Response: Delayed egress locks, as defined by NFPA 101 5-2.1.6, are allowed in any facility meeting the requirements of NFPA 101, Section 12, which is required for licensure as a large Type B facility. Locks are allowed, not required, by the standards.

Comment: The requirement for a manual fire pull to be located within 5'0" of each exit door will create a significant hazard. If a resident pulls the fire alarm in an effort to leave the building, all exit doors will immediately be unlocked creating a serious hazard for all residents. I suggest that the manual fire pulls be located further away from the exit doors to help reduce this hazard.

Response: The manual pull within 5'0" of the exit door is a safeguard added when the delayed egress bar requirement of 5-2.1.6. was removed. This trade-off was approved by the Health Care Financing Administration for Alzheimer's standards in nursing facilities and those standards were followed for the personal care standards.

Comment: My contractor has not been able to find a waterproof magnetic lock as required by the proposed rules.

Response: Waterproof magnetic locks are installed throughout the state on gates of enclosed exterior spaces provided for nursing facilities' locked units.

Comment: If the back yard is big enough to qualify as a refuge area, I don't think the magnetic lock should be required.

Response: The personal care rules do not include "area of refuge" language.

Comment: When power goes out, not only is the front door magnetic lock open and not secure, so will the back yard be unsecured. At least 2 people will be needed to watch/stand by the doors, rather than watch residents.

Response: Each facility will be responsible for developing plans for such emergencies. Nursing facilities address the problem through generators to provide emergency power to locking devices on their locked units.

In addition, the department made editorial changes in §92.51 and §92.53.

The new sections are adopted under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Health and Safety Code, §§247.001- 247.066, and the Human Resources Code, §§22.001-22.030.

§ 92.51. *Licensure of Facilities for Persons with Alzheimer's Disease.*

(a) Any facility which advertises, markets, or otherwise promotes that the facility or a distinct part of the facility provides specialized care for persons with Alzheimer's disease or related disorders must be certified under this subchapter. Use of advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness" will not trigger a requirement for certification as an Alzheimer's facility.

(b) The facility must be licensed as a Type B facility.

(c) Application for certification must be made on forms prescribed by the Texas Department of Human Services (DHS) and must include:

(1) an annual fee of \$100; and

(2) a disclosure statement, using DHS's form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, which includes the pre-admission process, the admission process, discharge and transfer, planning and implementation of care, change in condition issues, staff training on dementia care, the physical environment, and staffing. The disclosure statement must be updated and submitted to DHS as needed to reflect changes in special services for residents with Alzheimer's disease or related disorders.

(d) The facility must not exceed the maximum number of residents specified on the certificate.

(e) A certificate must be posted in a prominent location for public view.

(f) A certificate is valid for one year from the effective date of approval by DHS.

(g) A certificate will be cancelled upon change of ownership and if DHS finds that the certified unit or facility is not in compliance with applicable laws and rules. A facility must remove a cancelled certificate from display and advertising, and the certificate must be surrendered to DHS upon request.

§ 92.53. *Standards for Certified Alzheimer's Personal Care Facilities.*

(a) Manager qualifications and training.

(1) The manager of the certified Alzheimer facility or the supervisor of the certified Alzheimer unit must be 21 years of age, and have:

(A) a college degree in psychology, social work, counseling, gerontology, nursing or a related field, with documented course work in dementia care; or

(B) one year of work experience with persons with dementia.

(2) The manager or supervisor must complete six hours of annual continuing education regarding dementia care.

(b) Staff training.

(1) All staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(A) basic information about the causes, progression, and management of Alzheimer's disease;

(B) managing dysfunctional behavior; and

(C) identifying and alleviating safety risks to residents with Alzheimer's disease.

(2) Direct care staff must receive 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must cover:

(A) providing assistance with the activities of daily living;

(B) emergency and evacuation procedures specific to the dementia population; and

(C) managing dysfunctional behavior.

(3) Direct care staff must annually complete 12 hours of inservice education regarding Alzheimer's disease. Suggested topics include:

(A) assessing resident capabilities and developing and implementing service plans;

(B) promoting resident dignity, independence, individuality, privacy and choice;

(C) planning and facilitating activities appropriate for the dementia resident;

(D) communicating with families and other persons interested in the resident;

(E) resident rights and principles of self-determination;

(F) care of elderly persons with physical, cognitive, behavioral and social disabilities;

(G) medical and social needs of the resident;

(H) common psychotropics and side effects; and

(I) local community resources.

(c) Staffing. A facility must employ sufficient staff to provide services for and meet the needs of its Alzheimer's residents. In large facilities or units with 17 or more residents, two staff members must be immediately available when residents are present.

(d) Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to ensure that prospective residents are appropriate and their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the disclosure statement with the family or responsible party.

(2) The facility must give the required Texas Department of Human Services (DHS) disclosure statement to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease or a related disorder.

(e) Assessment. The facility must make a comprehensive assessment of each resident within 14 days of admission and annually. The assessment must include at least the following information:

(1) medical conditions and medical history;

(2) physical and mental functional status;

(3) social history, including, but not limited to, the resident's customary routines, behaviors, preferences, and needs;

(4) nutritional status, including weight, and nutritional requirements;

(5) mental and psychosocial status; and

(6) activities potential.

(f) Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident assessment, within 14 days of admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning.

(g) Activities. A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be

individualized, based upon the resident assessment, and appropriate for each resident's abilities.

(1) The activity program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(A) Cognitive activities include, but are not limited to, arts, crafts, story telling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(B) Recreational activities include all socially interactive activities, such as board games and cards, and physical exercise. Care of pets is encouraged.

(C) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able to promote independence and self worth.

(2) Residents must be encouraged, but never forced, to participate in activities. Residents who choose not to participate in a large group activity must be offered at least one small group or one-on-one activity per day.

(3) Facilities must have an employee responsible for leading activities.

(A) Facilities with 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(B) Facilities with 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(i) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification or the National Certification Council for Activity Professionals; or

(ii) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(iii) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(4) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to the residents' unique requirements and skills.

(5) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(6) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(7) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(8) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

(h) Physical plant. Alzheimer's units, if segregated from other parts of the Type "B" facility with approved security devices, must meet the following requirements within the Alzheimer's unit.

(1) Resident living area(s) must be in compliance with §92.62(1)(3) of this title (relating to General Requirements).

(2) Resident dining area(s) must be in compliance with §92.62(1)(4) of this title (relating to General Requirements).

(3) Resident toilet and bathing facilities must be in compliance with §92.62(1)(2) of this title (relating to General Requirements).

(4) A monitoring station must be provided within the Alzheimer's unit with a writing surface such as a desk or counter, chair, task illumination, telephone or intercom, and lockable storage for resident records.

(5) Access to at least two approved exits remote from each other must be provided in order to meet the Life Safety Code requirements.

(6) In large facilities, cross corridor control doors, if used for the security of the residents, must be similar to smoke doors, which are each 34 inches in width and swing in opposite directions. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device.

(7) An outdoor area of at least 800 square feet must be provided in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility.

(A) Such areas must have walls or fencing that do not allow climbing or present a hazard and meet the following requirements. These minimum dimensions do not apply to additional fencing erected along property lines or building setback lines for privacy or to meet requirements of local building authorities.

(i) Minimum distance of the enclosure fence from the building is 8 feet if the fence is parallel to the building and there are no window openings;

(ii) Minimum distance of the enclosure fence (parallel with building walls) from bedroom windows is 20 feet if the fencing is solid and 15 feet from bedroom windows if the fencing is open; or

(iii) For unusual or unique site conditions, areas of enclosure may have alternate configurations with DHS approval.

(B) Access to at least two approved exits remote from each other must be provided from the enclosed area in order to meet the Life Safety Code requirements.

(C) If the enclosed area involves a required exit from the building, the following additional requirements must be met:

(i) A minimum of two gates must be remotely located from each other if only one exit is enclosed. If two or more exits are enclosed by the fencing and entry access can be made at each door, a minimum of one gate is required.

(ii) The gate(s) must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(iii) If gate(s) are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks on control doors and/or exit doors and is in compliance with the National Electrical Code for exterior exposure. Additional gates may also have electronic locks or may have keyed locks provided staff carry the keys.

(8) Locking devices may be used on the control doors provided the following criteria are met.

(A) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(B) The locking device must be electronic and must be released when the following occurs:

(i) activation of the fire alarm or sprinkler system;

(ii) power failure to the facility; or

(iii) activation of a switch or button located at the monitoring station and at the main staff station.

(C) A key pad or buttons may be located at the control doors for routine use by staff.

(9) Locking devices may be used on the exit doors provided:

(A) the locking arrangements meet §5-2.1.6 of the Life Safety Code; or

(B) the following criteria are met:

(i) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(ii) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(iii) The device must release when the following occurs:

(I) activation of the fire alarm or sprinkler system;

(II) power failure to the facility; or

(III) activation of a switch or button located at the monitoring station and at the main staff station.

(iv) A key pad or buttons may be located at the control doors for routine use by staff.

(v) A manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency."

(vi) Staff must be trained in the methods of releasing the door device.

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 September 9, 1998.

TRD-9814320

Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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Part XX. Texas Workforce Commission

Chapter 813. Food Stamp Employment and Training

The Texas Workforce Commission (Commission) adopts the repeal of §§813.1 and 813.2 and adopts new §§813.1, 813.2, 813.11-813.14, 813.21-813.23, 813.31-813.33, and 813.41-813.43 relating to the Food Stamp Employment and Training (E&T) Program. Sections 813.1, 813.11-813.14, 813.21, 813.23, 813.31-813.33, 813.41-813.43 are adopted without changes and will not be republished. Sections 813.2 and 813.22 are adopted with changes to the proposed text as published in the July 31, 1998, issue of *Texas Register* (23 TexReg 7756), which volume was published as 24.

Adoption of these new rules governing the E&T Program is justified to ensure that the E&T Program is in compliance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997.

Subchapter A sets out the General Provisions. Section 813.1 states the purpose and §813.2 sets out the definitions and terms used in this chapter. Subchapter B sets out the provisions for Expenditure of Funds. Section 813.11 states who is to be served; §813.12 states what funds are designated for able-bodied adults without dependents (ABAWDs); §813.13 details the reimbursement basis; and §813.14 provides information regarding the other E&T Program funds. Subchapter C sets out the Allowable Activities. Section 813.21 sets out the allowable activities for ABAWDs; §813.22 sets out the activities for all E&T mandatory work registrants; and §813.23 sets out the reimbursement rates. Subchapter D sets out the Support Services for Participants. Section 813.31 is the general provision on support services; §813.32 discusses child care services; and §813.33 discusses the transportation assistance. Subchapter E sets out Complaints and Appeals. Section 813.41 addresses appeals of decisions made on food stamp applications and benefits; §813.42 addresses appeals of E&T Program decisions; and §813.43 addresses discrimination complaints.

The Food Stamp Act of 1977 requires able-bodied adults between the ages of 16-59, referred by the food stamp office, to register for work and take part in an E&T Program. Failure to comply with these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires ABAWDs to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

The Balanced Budget Act of 1997 mandates that the states utilize at least 80% of the 100% federal Food Stamp E&T funds for qualifying work activities for ABAWDs. The remaining 20% may be used to provide work activities specified in the Texas

State Plan, approved by the U.S. Department of Agriculture, for all mandatory work registrants. The remaining 20% funds are not subject to the restrictions placed upon the 80% of the federal funds.

The Balanced Budget Act also provides the U.S. Secretary of Agriculture with the authority to set reimbursement rates for the E&T Program components provided to ABAWDs to ensure that they reflect reasonable cost for providing those activities. The U.S. Food and Nutrition Service (FNS) has set two levels for the maximum rates paid for both workfare and training components. One level is for a filled position and the other level is for an unfilled position. The adopted rules contain these reimbursement rates. The adopted rules set out the method in which the 80% program services funds for ABAWDs will be provided to local workforce development boards. TWC plans to reimburse local boards for their allowable expenditures for education, training, and job search/workfare based on the maximum reimbursement rates specified in §813.23 of this title (relating to Reimbursement Rates), and up to the board's allocation amount of the designated ABAWD funds.

A public hearing was held on August 11, 1998, at 2:30 p.m. in the Texas Workforce Commission Building, 101 East 15th Street, Room 644, Austin, Texas 78778. No comments were offered.

Written comments requesting changes were offered by the Texas AFL-CIO. The Commission's response follows each comment.

Comment: The commenter asserts that there should be a provision in the rules clearly stating that displacement of current workers is prohibited in workfare situations and that this provision applies in Texas.

Response: Prohibitions against displacement are found in federal law and regulation. The Commission believes a restatement of federal provisions is unnecessary. Therefore, the Commission declines to make the suggested change.

Comment: The commenter believes that there should be a procedure for addressing displacement complaints so that victims and advocates will be aware of how to enforce the nondisplacement provisions. The commenter suggests expanding the procedure outlined in §813.43 for discrimination complaints to cover these situations.

Response: The Commission does not agree with this suggestion, as it would create new administrative burdens not required by the enabling federal statutes or regulations. The Commission is committed to administering this program within the guidelines established by applicable federal law and regulation. Under current federal regulation the Commission has a duty to monitor the operating agencies of this program for compliance with the governing federal regulations, including those concerning displacement.

Comment: The commenter requests that a definition of "non-profit organization," for purposes of qualification for the program, be added.

Response: The Commission agrees and has added a definition of non-profit organization in §813.2, Definitions.

Comment: The commenter requests adding a requirement for competitive bidding and disclosure for those who wish to receive workfare participants. The commenter believes that this will eliminate the potential for insider dealing and corruption.

Response: The Commission does not agree with requiring this administrative burden. Any entity that meets the requirements is welcome to participate in the workfare program; as such, competitive bidding for workfare providers is not needed. The workfare program under the Food Stamp E&T Program complies with federal regulations in 7 C.F.R. §273.22, including the establishment of agreements between the Commission or Local Workforce Development Board and the entity providing workfare positions. The Commission therefore declines to require competitive bidding for workfare providers.

The Commission has amended §813.22, Other Activities for all E&T Program Mandatory Work Registrants. The proposed rules stated that these activities may be funded with the 20% of the 100% federal funds and the state matching funds. In order to provide flexibility, the revised rule changes the "and" to "or."

40 TAC §813.1 and §813.2

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

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 September 10, 1998.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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



Subchapter A. General Provisions

40 TAC §813.1, §813.2

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

§813.2. Definitions.

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

(1) ABAWD – able-bodied adults, age 18 to 50, without dependents.

(2) Dependents – individuals under 18 years of age.

(3) E&T Program – the Food Stamp Employment and Training Program.

(4) Mandatory work registrant – a non-exempt food stamp household member, age 16 through 59, who is required to register for employment services.

(5) Non-Public Assistance Food Stamp Recipients – a classification by the Department of Human Services for a food stamp household in which all or some of its members do not receive Temporary Assistance for Needy Families (TANF) or Refugee Cash Assistance.

(6) Nonprofit Organization - any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for-profit; and uses its net proceeds to maintain, improve, or expand its operations.

(7) Participant – a Food Stamp recipient participating in the E&T program.

(8) Workfare Program – placement with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an E&T Program participant's food stamp monthly allotment amount divided by the federal minimum wage.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: July 31, 1998

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



Subchapter B. Expenditure of Funds

40 TAC §§813.11-813.14

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

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 September 10, 1998.

TRD-9814336

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: September 30, 1998

Proposal publication date: July 31, 1998

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



Subchapter C. Allowable Activities for Participants

40 TAC §§813.21-813.23

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

§813.22. Other Activities for all E&T Program Mandatory Work Registrants.

The following activities may be provided for all E&T Program mandatory work registrants, including ABAWDs, as long as they are funded with the 20% of the 100% federal funds or the state matching funds:

- (1) job search;
- (2) job readiness;
- (3) vocational training;
- (4) non-vocational education;
- (5) work experience; or
- (6) other activities approved in the current Food Stamp

Employment and Training State Plan located at the Texas Workforce Commission state office building.

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 September 10, 1998.

TRD-9814337
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: September 30, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-8812



Subchapter D. Support Services for Participants

40 TAC §§813.31-813.33

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

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 September 10, 1998.

TRD-9814338
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: September 30, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-8812



Subchapter E. Complaints and Appeals

40 TAC §§813.41-813.43

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

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 September 10, 1998.

TRD-9814339
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: September 30, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-8812



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action

The Commissioner of Insurance, at a public hearing under Docket No. 2383 scheduled for November 4, 1998 at 10:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1997, 1998, and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0998-25-I), was filed on September 8, 1998.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1997, 1998, and 1999 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0998-25-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9814555
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 15, 1998

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== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part II

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 61, School Districts, Subchapter A, Board of Trustees Relationship, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 61, Subchapter A, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814481

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. Chapter 61, Subchapter AA, contains rules relating to county education districts and school finance.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 61, Subchapter AA, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814482

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 61, School Districts, Subchapter BB, Commissioner's Rules on Reporting Requirements, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 61, Subchapter BB, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814483

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 61, School Districts, Subchapter CC, Commissioner's Rules Concerning School Facilities, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 61, Subchapter CC, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814484

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 61, School Districts, Subchapter DD, Commissioner's Rules Concerning Missing Child Prevention and Identification Programs, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 61, Subchapter DD, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814485
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 75, Curriculum, Subchapter BB, Commissioner's Rules Concerning Special Provisions for Career and Technology Education, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 75, Subchapter BB, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814486
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter B, Adult Basic and Secondary Education, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 89, Subchapter B, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814487

Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter C, General Educational Development, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 89, Subchapter C, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814488
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 89, Subchapter BB, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814489
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 161, Advisory Committees, Subchapter AA, Commissioner's Rules, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 161, Subchapter AA, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9814490

Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 14, 1998



Texas State Board of Pharmacy

Title 22, Part XV

The Texas State Board of Pharmacy proposes to review Chapter 281. General Provisions, §§281.1 - 281.80 in accordance with the Appropriations Act, §167. In conjunction with this review, the agency proposes the repeal of §§281.1 - 281.80 and simultaneously proposes new §§281.1 - 281.58 concerning administrative practice and procedure. A complete revision of Chapter 281 is necessary, due in part to the newly adopted State Office of Administrative Hearings rules and to efforts to streamline administrative procedures.

Even though the agency is repealing and simultaneously proposing new rules, the agency's reasons for adopting the rules in this area continues to exist. The proposed repeal and simultaneous proposal of new rules is published in the Proposed Rule Section of this *Texas Register*.

Comments on the proposal may be submitted to Gay Dodson, R.Ph., Executive Director, Texas State Board of Pharmacy, 333 Guadalupe Street, Austin, Texas 78701.

TRD-9814466
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: September 14, 1998



The Texas State Board of Pharmacy proposes to review Chapter 301. Fraud, Deceit, and Misrepresentation in the Practice of Pharmacy, §309.1 in accordance with the Appropriations Act, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposal may be submitted to Gay Dodson, R.Ph., Executive Director, Texas State Board of Pharmacy, 333 Guadalupe Street, Austin, Texas 78701.

TRD-9814468
Gay Dodson
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: September 14, 1998



The Texas State Board of Pharmacy proposes to review Chapter 311. Code of Conduct, §§311.1 - 311.2 in accordance with the Appropriations Act, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposal may be submitted to Gay Dodson, R.Ph., Executive Director, Texas State Board of Pharmacy, 333 Guadalupe Street, Austin, Texas 78701.

TRD-9814467
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: September 14, 1998



Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission proposes to review all sections in Chapter 537 in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of the sections within this chapter continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

TRD-9814626
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: September 15, 1998



Adopted Rule Review

Texas Veterinary Medical Diagnostic Laboratory

Title 4, Part IX

Texas Veterinary Medical Diagnostic Laboratory (TVMDL) proposes to re-adopt Chapter 162, Pullorum Disease and Fowl Typhoid Program Rules, in accordance with the appropriations Act, 167.

The agency's reasons for adopting the rules contained in this chapter continue to exist.

Comments on the proposals may be submitted to Dr. Konrad Eugster, Associate Vice Chancellor of Agriculture, TVMDL, P.O. Drawer 3040, College Station, TX 77841-3040, FAX (409) 845-1794, or by e-mail to keugster@tvmidl.tamu.edu.

TRD-9814567
Dr. A. Konrad Eugster
Associate Vice Chancellor of Agriculture
Texas Veterinary Medical Diagnostic Laboratory
Filed: September 15, 1998



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 31 TAC §65.72(b)(2)(B).

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Spotted and Guadalupe bass.		12	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30
Drum, red.	3*	20	28*
<p>*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.</p>			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
<p>*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.</p>			
Jewfish.	0		

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Mackerel, king.	2	23	No limit
Mackerel, Spanish.	7	14	No limit
Marlin, blue.	No limit	114	No limit
Marlin, white.	No limit	81	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	No limit*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish	No limit	76	No limit
Saugeye	3	18	No limit
Seatrout, spotted.	10	15	No limit
Shark: all species, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Sheepshead.	5	12	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	5*	15	No limit
*Special Regulation: Bag and possession limits for red snapper will be zero (0) during the period September 30, 1998 through December 31, 1998.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	0		Catch and release only*.
*Special Regulation: One tarpon 80 inches in length or larger may be retained during a license year when affixed with a properly executed Tarpon Tag.			
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Walleye.	5	16	No limit

Figure: 37 TAC §157.4(b)

REGION ONE

Dallas

REGION TWO

Anderson Angelina Bowie Camp Cass Cherokee Delta Ellis Franklin Freestone Gregg Grimes Harrison Henderson Hopkins Houston Jasper Kaufman	Lamar Leon Limestone Madison Marion Morris Nacogdoches Navarro Newton Panola Polk Rains Red River Rusk Sabine San Augustine San Jacinto Shelby	Smith Titus Trinity Tyler Upshur Van Zandt Walker Wood
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REGION THREE

Brazoria Chambers Fort Bend Galveston Hardin	Harris Jefferson Liberty Montgomery Orange
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Figure: 37 TAC §157.4(b) continued

REGION FOUR

Aransas Bee Brooks Cameron Duval Hidalgo Jim Hogg Jim Wells Kenedy	Kleberg Live Oak McMullen Nueces San Patricio Starr Webb Willacy Zapata
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REGION FIVE

Atascosa Bandera Bexar Calhoun Crockett De Witt Dimmit Edwards Frio Gillespie	Goliad Jackson Karnes Kerr Kendall Kinney La Salle Matagorda Maverick Medina Real	Refugio Sutton Terrell Uvalde Val Verde Victoria Wharton Wilson Zavala
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Figure: 37 TAC §157.4(b) continued

REGION SIX

Austin	Comal	Menard
Bastrop	Fayette	Milam
Bell	Gonzales	Runnels
Blanco	Guadalupe	San Saba
Brazos	Hays	Schleicher
Burleson	Irion	Sterling
Burnet	Kimble	Taylor
Caldwell	Lampasas	Tom Green
Callahan	Lavaca	Travis
Coke	Lee	Waller
Coleman	Llano	Washington
Concho	Mason	Weber
Colorado	McCulloch	Williamson

REGION SEVEN

Archer	Falls	Palo Pinto
Bosque	Fannin	Parker
Brown	Grayson	Robertson
Clay	Hamilton	Rockwall
Collin	Hill	Somervell
Comanche	Hood	Stephens
Cooke	Hunt	Tarrant
Coryell	Jack	Wichita
Denton	Johnson	Wise
Eastland	McLennan	Young
Erath	Mills	
	Montague	

Figure: 37 TAC §157.4(b) continued

REGION EIGHT

Armstrong	Gaines	Mitchell
Bailey	Garza	Moore
Baylor	Gray	Motley
Borden	Hall	Nolan
Briscoe	Hale	Ochiltree
Carson	Hansford	Oldham
Castro	Hardeman	Parmer
Childress	Hartley	Potter
Cochran	Haskell	Randall
Collingsworth	Hemphill	Roberts
Cottle	Hockley	Scurry
Crosby	Hutchinson	Shackelford
Dallam	Jones	Sherman
Dawson	Kent	Stonewall
Deaf Smith	King	Swisher
Dickens	Knox	Terry
Donley	Lamb	Throckmorton
Fisher	Lipscomb	Wheeler
Floyd	Lubbock	Willbarger
Foard	Lynn	Yoakum

REGION NINE

Andrews	Loving
Brewster	Martin
Crane	Midland
Culberson	Pecos
Ector	Presidio
El Paso	Reagan
Glasscock	Reeves
Howard	Upton
Hudspeth	Ward
Jeff Davis	Winkler

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Wednesday, September 23, 1998, 3:00 p.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A prehearing conference is scheduled for the above date and time in SOAH Docket No. 473-98-1627; PUC Docket No. 19834; Application of Entergy Gulf Sates, Inc., to Implement Proposed fixed Fuel Factor and an Interim Fuel Surcharge.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: September 14, 1998, 2:59 p.m.

TRD-9814515



Texas Department of Agriculture

Monday, September 28, 1998, 9:00 a.m.

State Office of Administrative Hearings, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Administrative hearings before the State Office of Administrative Hearings regarding SOAH Docket No. 551-98-1411 in the Matter of Texas Department of Agriculture vs. Warren Howell, concerning alleged violation of pest control laws and regulations.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: September 14, 1998, 2:03 p.m.

TRD-9814505



Tuesday, September 29, 1998, 9:00 a.m.

State Office of Administrative Hearings, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Administrative hearings before the State Office of Administrative Hearings regarding SOAH Docket No. 551-98-1412 in the Matter of Texas Department of Agriculture vs. Jose Luis Vargas, concerning alleged violation of pest control laws and regulations.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: September 14, 1998, 2:03 p.m.

TRD-9814504



Tuesday, September 29, 1998, 9:00 a.m.

State Office of Administrative Hearings, 1700 North Congress Avenue, Suite 1100

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearings before the State Office of Administrative Hearings the following SOAH Docket Nos., concerning alleged violation of Texas Agriculture Code, Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a) (1997), as amended, as alleged by the Texas Department of Agriculture (TDA); 551-98-1256 TDA v. William H. Green d/b/a Third Day Creations; 551-98-1257 TDA v. Neches River Farm, Inc.; 551-98-1258 TDA v. John V. Taff d/a/b Rick's Main Street Florist; 551-98-1259 TDA v. Sharon K. Adams a/b/a Sharon's Florist; 551-98-1260 TDA v. Maudie M. Ward d/b/a Flowers and Moore; 551-98-1261 TDA v. Lake Conroe Nursery, Inc.; 551-98-1262 TDA v. Lake Conroe Nursery, Inc.; 551-98-1263 TDA v. Joe Muirhead d/b/a Splendor Feed Center.

Contact: Dolores Alvarado Hibbs, P.O. 12847, Austin, Texas 78711, 512/463-7541.

Filed: September 14, 1998, 2:03 p.m.

TRD-9814503

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Wednesday, September 30, 1998, 9:00 a.m.

State Office of Administrative Hearings, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearings regarding SOAH Docket No. 551-98-1415 in the Matter of Texas Department of Agriculture vs. Carolina Arrambide, concerning alleged violation of pest control laws and regulations.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78711, 512/463-7541.

Filed: September 14, 1998, 2:04 p.m.

TRD-9814506

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Texas Commission Alcohol and Drug Abuse

Friday, September 25, 1998, 11:00 a.m.

3930 Kirby, Suite 207, Texas Youth Commission

Houston

Regional Advisory Consortium (RAC) Region 6

AGENDA:

Call to order; welcome and introduction of guests; public comments; approval of minutes; old business: committee report and TCADA update; new business: new meeting location and RAC input for convenor's meeting; public comment; and adjournment.

Contact: Albert Ruiz, 9001 North IH35, Suite 105, Austin, Texas 78753, 512/349-6607 or 1/800/832-9623 Ext. 6607.

Filed: September 15, 1998, 3:37 p.m.

TRD-9814622

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Friday, October 2, 1998, 10:00 a.m.

220 West 5th, Red River Council on Alcohol and Drug Abuse

Texarkana

Regional Advisory Consortium (RAC) Region 4

AGENDA:

Call to order; welcome and introduction of guests; public comments; approval of minutes; old business: nominating committee report, election of officers and TCADA update; new business: RAC update distribution of new TCADA organizational chart and telephone list, and results of fiscal year 1999 request for proposal process; and adjournment.

Contact: Albert Ruiz, 9001 North IH35, Suite 105, Austin, Texas 78753, 512/349-6607 or 1/800/832-9623 Ext. 6607.

Filed: September 15, 1998, 11:32 a.m.

TRD-9814561

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Friday, October 2, 1998, 10:00 a.m.

230 Pereida Street, Family Services Association

San Antonio

Regional Advisory Consortium (RAC) Region 8

AGENDA:

Call to order; welcome and introduction of guests; approval of minutes; old business: membership and update on meeting with Al Knotson and Department of Human Services Board of Council of Governments; new business: programming-what is being done across the state and update on RAC convenor's meeting; public comment; and adjournment.

Contact: Albert Ruiz, 9001 North IH35, Suite 105, Austin, Texas 78753, 512/349-6607 or 1/800/832-9623 Ext. 6607.

Filed: September 15, 1998, 11:09 a.m.

TRD-9814560

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Texas Boll Weevil Eradication Foundation

Friday, September 18, 1998, 10:00 a.m.

American Bank of Commerce, 3721 50th Street

Lubbock

Finance Committee

AGENDA:

Call to order; opening remarks and introductions; discussion and action: review and approval and recommendation budgets for: Rolling Plains Central, South Rolling Plains, South Texas/Winter Garden Headquarters, Southern Blacklands; other business and adjourn.

Contact: Katie Dickie, P.O. Box 12847, Austin, Texas 78711, 512/463-7593.

Filed: September 9, 1998, 4:21 p.m.

TRD-9814321

◆ ◆ ◆

Thursday, September 24, 1998, 7:00 a.m.

Sheraton Grand Hotel, Highway 114, and Esters Boulevard

Dallas

Insurance Committee

AGENDA:

Call to order; opening remarks and introductions; discussion and action: workers compensation insurance; general liability insurance, other business and adjourn.

Contact: Katie Dickie, P.O. Box 12847, Austin, Texas 78711, 512/463-7593.

Filed: September 15, 1998, 5:04 p.m.

TRD-9814631



Thursday, September 24, 1998, 8:30 a.m.

Sheraton Grand Hotel, Highway 114 and Esters Boulevard

Dallas

AGENDA:

Call to order;

opening remarks and introductions;

discussion and action: review minutes from prior meeting; chief financial officer's report; committee report; insurance committee report; technical advisory committee report; program director's report; executive director's report; TDA report; USDA/APHIS report; NCC report; chairman's report; adjourn for executive session.

Executive session: to consult with attorney in accordance with Tex. Gov. Code, Ann. Sec. 551.071; adjourn executive session; reconvene board meeting;

Discussion and action: Executive Session; if necessary; next meeting time and place.

Discussion: other business

Adjourn

Contact: Katie Dickie, P.O. Box 12847, Austin, Texas 78711, 512/463-7593.

Filed: September 15, 1998, 5:05 p.m.

TRD-9814632



Texas Bond Review Board

Thursday, September 17, 1998, 10:00 a.m.

State Capitol, Room 2E.020

Austin

Board Meeting

AGENDA:

I. Call to order

II. Consideration of proposed issues: Texas Department of Public Safety-lease purchase of an enterprise server

III. Other business: Discussion of Texas Department of Housing and Community Affairs application for Commercial Paper Program addition authorization

IV. Adjourn

Contact: Jose Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, 512/463-1741.

Filed: September 9, 1998, 3:04 p.m.

TRD-9814309



Texas Cosmetology Commission

Monday, September 28, 1998, 10:00 a.m.

5717 Balcones Drive, 2nd Floor

Austin

Commission Meeting

AGENDA:

Call to order; approval of commission meeting held June 15, 1998, and possible vote; executive director's report; discussion of operator examine revisions, and possible vote; Ms. Thy Thi Anh Tran-discussion of revoked license, and possible vote; discussion of Legislative Appropriations Request (LAR), and possible vote; discussion of tentative commission meeting schedule for fy99; discussion/review of interagency contract with the Board of Barber Examiners, and possible vote; review of affirmative action plan, and possible vote; executive session; reconvene in open session and possible vote; adjourn.

Contact: Catherine Nahay, 5717 Balcones Drive, Austin, Texas 78755-0700, 512/454-4674.

Filed: September 14, 1998, 2:34 p.m.

TRD-9814509



Credit Union Department

Tuesday, September 29, 1998, 1:00 p.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

Legislative Advisory Committee for the Credit Union Commission

AGENDA:

To Invite: Public input for future consideration. To Receive: Minutes of July 16, 1998 meeting; To Consider: Taking formal action to Revise or Modify the Legislative Recommendations to be Submitted for Consideration by the 76th Legislature; Establishing date for the next Committee Meeting; To conduct: Discussion of the Mandated Study (75th Leg., R.S., Ch. 338, 1997 Tex. Sess. Law. Serv. 1450) of State Laws Governing Financial Institutions.

In the event the Commission does not finish deliberation of an item of the first day for which it was posted, the Commission might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Carol Shaner at 512/837-9236.

Contact: Isabel Velasquez, 914 East Anderson Lane, Austin, Texas 78752-1699, 512/837-9236.

Filed: September 14, 1998, 4:19 p.m.

TRD-9814527

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Texas Commission for the Deaf and Hard of Hearing

Friday, September 18, 1998, 1:00 p.m.

4900 North Lamar Boulevard, Room 7230

Austin

Commission

AGENDA:

Establish a quorum: call to order; public comment; approval of minutes from July 17, 1998 meeting; executive director report including discussion and action regarding extension of the Advisory Committee expiration dates (Action) and, Budget Hearing Report; board for Evaluation of Interpreters Report including discussion and possible action on adoption of amendment to 40 TAC §183.573, Fees (Action), discussion and possible action on development of SEE II Testing Materials (Action), approval of licenses (Action) and, license reinstatement (Action); Direct Services Report including Contract Awards Update; East Texas Pilot Project Update, Camp Sign Report Update, Hard of Hearing Task force Member (Action); Specialized Telecommunications Devises Assistance Program Report; Executive Session pursuant to Chapter 551 of the Texas Government Code, Section 551.074, for deliberation of officers or employees; Dates for future Commission meetings; informational items; adjournment.

Contact: David Meyers, 4900 North Lamar Boulevard, Austin, Texas 512/407-3250.

Filed: September 9, 1998, 4:44 p.m.

TRD-9814330

◆ ◆ ◆
State Board of Dental Examiners

Wednesday, September 23, 1998, 1:00 p.m.

SBDE Office, 333 Guadalupe, Tower III, Suite 800, 8th Floor

Austin

Legislative Committee Meeting

AGENDA:

I. Call to order

II. Roll call

III. Discuss, review and consider proposing amendments to the dental practice action for presentation to the board

IV. Announcements

V. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower III, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: September 14, 1998, 9:49 a.m.

TRD-9814480

◆ ◆ ◆
Texas Planning Council for Developmental Disabilities

Friday, September 25, 1998, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Room 3501

Austin

Traumatic Brain Injury Advisory Board

AGENDA:

9:30 a.m. call to order

I. Welcome, introduction, and minutes

II. Report on State of States and TBI Demo Grants Meetings

III. Consideration of final draft of Statewide Plan

IV. Consideration of Final draft: Policy Analysis and Needs Assessment Report

V. Consideration: Legislative Initiatives

VI. Presentation: HHSC Community Transportation Services

4:30 p.m. Adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, reader, large print or Braille, are requested to contact Sandra Knutson at 972/726-7790.

Contact: Sandra Knutson, 16209 Dalmalley Lane, Dallas, Texas 75248, 972/726-7790.

Filed: September 16, 1998, 10:27 a.m.

TRD-9814666

◆ ◆ ◆
Texas Department of Economic Development

Sunday, September 20, 1998, 10:00 a.m.

111 Pecan Street East, Adam's Mark Hotel on the Riverwalk Room: Executive Salon 2

San Antonio

Tourism Advisory Committee

AGENDA:

10:00 a.m. Introduction election of chair and vice chair: governing board report: director's report: marketing overview: committee reports: new business: adjourn 12:00 p.m.

Contact: Hector Herrera, Tourism Division Program Support Assistance, 512/462-9191.

Filed: September 14, 1998, 3:36 p.m.

TRD-9814519

◆ ◆ ◆
Wednesday, September 23, 1998, 10:00 a.m.

7517 Cameron Road, Suite 100, Room 1A

Austin

Texas Manufacturing Institute Board

AGENDA:

Call to order; adopt minutes from April 23 and August 18, 1998; discussion and possible action on strategic issues related to Texas Manufacturing Institute (TMI) and the Texas Manufacturing Assistance Center (TMAC); Board comments; public comments; adjourn.

Persons with disabilities who plan to attend this meeting who may need auxiliary aids or services, or who need assistance in having

English translated into Spanish, should contact Lena Chiu 512/936-0234, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Gary Rosenquest, 7517 Cameron Road, Suite 100, Room A, Austin, Texas 78752, 512/936-0433.

Filed: September 15, 1998, 12:56 p.m.

TRD-9814563



State Board for Educator Certification

Tuesday, September 22, 1998, Noon

1001 Trinity, 5th Floor, Teacher Retirement System Building, Board Room

Austin

Board

AGENDA:

1. Call to order. 2. Discussion and Possible Action on Proposed Rule, new 19 TAC Chapter 249, relating to Disciplinary Proceedings and Sanctions (including Enforcement of the Educator's Code of Ethics). 3. Discussion and Possible Action on Proposed Amendment to Rule, 19 TAC §230.414, relating to Certificates for Persons with Criminal Backgrounds. 4. Executive Session-To consider the appointment, and duties of a new Executive Director and to interview candidates for the position of Executive Director, pursuant to Texas government Code, §551.074(a)(1) (Texas Open Meeting Act). 5. Return to open session for further discussion and possible action involving the appointment, employment, and duties of a new Executive Director, pursuant to Texas Government Code, §551.074(a)(1) (Texas Open Meeting Act.)

Contact: Denise Jones, State Board of Educator Certification, Austin, Texas 78701, 512/469-3005.

Filed: September 15, 1998, 4:13 p.m.

TRD-9814627



State Employee Charitable Campaign

Wednesday, September 16, 1998, 0:00 a.m.

Center for Energy and Economic Development, University of Texas-Permian Basin, SH 191 and FM 1788

Odessa

Local Employee Committee-Midland/Odessa Area

AGENDA:

I. Call to order
II. Read and approve the minutes for August 19, 1998 meeting
III. Review progress on the 1998 campaign
IV. Consider and adopt strategies to enhance the campaign
V. Receive a briefing on SECC issues at state level
VI. Adjourn

Contact: Percy Symonette, 1209 West Wall, Midland, Texas 79701, 915/685-7700.

Filed: September 9, 1998, 4:56 p.m.

TRD-9814333



Tuesday, September 22, 1998, 9:00 a.m.

1327 11th Street

Huntsville

Local Employee Committee-Huntsville

AGENDA:

I. Call to order
II. Review and adopt minutes from August 13, 1998 meeting
III. Discuss recent Coordinator's Training
IV. Discuss campaign activity within state agencies
V. Consider and take action regarding next meeting date and agenda

Contact: Tina Cope, P.O. Box 99, Huntsville, Texas 77342-0009, 409/294-6391.

Filed: September 14, 1998, 2:38 p.m.

TRD-9814510



Tuesday, September 22, 1998, Noon

2902 Leopard Street, United Way of the Coast Bend

Corpus Christi

Local Employee Committee-Corpus Christi

AGENDA:

I. Call to order
II. Consider and take action regarding August 4, 1998 meeting minutes
III. Campaign Kickoff Critique
IV. Consider and take action regarding next meeting date
V. Adjourn

Contact: Debbie Winters, 2902 Leopard Street, Corpus Christi, Texas 78469, 1/800/852-2404.

Filed: September 9, 1998, 4:49 p.m.

TRD-9814332



Friday, October 2, 1998, 11:30 a.m.

11937 U.S. Highway 271

Tyler

Local Employee Committee-Tyler/Smith County Area

AGENDA:

I. Call to order
II. Approve minutes of August 20, 1998 meeting
III. Review Campaign Plan
IV. Discuss Agency feed back
V. Consider and take action regarding distribution of Deep in the Hearing buttons and addition materials
VI. Consider and take regarding Post Campaign Activities
VII. Consider and take action regarding Agenda and Scheduling of Next Meeting

Contact: Dawn Franks, 4000 Southpark Drive, Suite 1200, Tyler, Texas 75703, 903/581-6367.
Filed: September 14, 1998, 2:58 p.m.
TRD-9814514

◆ ◆ ◆
Texas Funeral Service Commission

Monday, September 21, 1998, 10:00 a.m.

510 South Congress, Suite 206

Austin

Ad Hoc Committee on Rules Review

AGENDA:

1. Convene, chairman, Kenneth Hughes.
2. Discussion and possible action on review of agency rules in accordance with the Appropriations Act, Section 167.
3. Begin review of Chapter 201.4.
4. Adjourn.

Contact: Eliza May, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716, 512/479-7222.

Filed: September 9, 1998, 1:07 p.m.

TRD-9814301

◆ ◆ ◆
Monday, September 21, 1998, 2:00 p.m.

510 South Congress, Suite 206

Austin

Rules Committee

AGENDA:

1. Convene, chairman, Kenneth Hughes.
2. Discussion and possible action on Embalming Case Report Form;
3. Discussion and possible action in Investigation of Anonymous Complaint.
4. Discussion and possible action on requirements for advertisement.
5. Discussion and possible action on requirements for rule regarding "Acts of God".
6. Discussion and possible action on 22 TAC §203.15, requirements for reciprocal licenser.
7. Discussion and possible action on interpretation of 22 TAC §203.16, minimum standards for embalming.
8. Discussion and possible action on deletion of 22 TAC §203.15(d), requirements for reciprocal licensure.
9. Discussion and possible action on 22 TAC §203.6, provisional licensees and 22 TAC §203.27, sponsor of provisional licensees.
10. other business.
11. public comment.
12. adjourn.

Contact: Eliza May, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716, 512/479-7222.

Filed: September 11, 1998, 5:08 p.m.

TRD-9814448

◆ ◆ ◆
Wednesday, September 23, 1998, 8:30 a.m.

Omni Austin Hotel Southpark, 4140 Governor's Row

Austin

AGENDA:

1. Convene, chair, Robert Duncan.
2. Funeral Director and Embalmer Exit Exams for eligible provisional licensees as posted in this notice.
3. Adjourn.

Contact: Eliza May, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716, 512/479-7222.
Filed: September 11, 1998, 5:08 p.m.

TRD-9814447

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Thursday, September 24, 1998, 9:00 a.m.

510 South Congress, Suite 206

Commission Meeting

Austin

AGENDA:

- Convene, Chairman, Dick McNeil.
2. Adoption of the May 7, 198, commission meeting minutes.
 3. Public comment.
 4. Chairman's report, discussion and possible action.
 5. Executive Director's report.
 6. Discussion and possible action on petitions by Southland Hughes Funeral Home; North's Funeral Home; Rhodes Funeral Home, Inc.; Scott-Morris Funeral Home; Budget Funeral Home; Adams Funeral Home and Rosewood Funeral Home for an exemption regarding the location of retained records as provided by 22 TAC §203.23(b) of the Commission rules.
 7. Discussion and possible action on request to attend Mortuary School for Rodrick G. Barnes, Charmetric Williams, and Aaron Almendarez.
 8. Discussion and possible action on On-Renewal of Individual Licensees for violations of §3(H), Article 4582b, Texas Revised Civil Statutes: Ronny Young, FD08780; Robert Jekel DL08719; Jill Juarez, FD10119.
 9. Final adoption of amendment to commission rule 22 TAC §201.18, charges for providing copies of public information.
 10. Discussion and possible action on response to Commissioner Keegan's Committee report dated May 7, 1998 by Commissioners Tommy Metcalf and Robert Duncan.
 11. Discussion and possible action on reports from the following committees: (A) Rules Committee; (B) Reciprocal Licensure Committee; (C) Ad-Hoc Committee on Rules Review; (D) Finance Review Committee.
 12. Discussion and possible action on 22 TAC §203.15, requirements for reciprocal licensure.
 13. Discussion and possible action on the Mediation of Complaint Numbers 98-085 and 98-113.
 14. Final ratification on actions taken on the cases posted in this notice.
 15. Public comment.
 16. Setting of Next Commission Meetings.
 17. Adjourn.

Contact: Eliza May, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716, 512/479-7222.

Filed: September 14, 1998, 2:33 p.m.

TRD-9814508

◆ ◆ ◆
Texas Guaranteed Student Loan Corporation

Thursday, September 24, 1998, 2:00 p.m.

13809 North Highway 183, Suite 301

Austin

Executive Committee

AGENDA:

1. Call to order
2. Approval of minutes from September 18, 1997 meeting
3. Discussion of Nominations for Board Officers in FY99 (October 1, 1998-September 30, 1999) and report to the Board of Directors

4. Adjourn to Executive Session: Discussion of CEO's Performance Evaluation and Discussion of Performance Evaluation with CEO
5. Resume Open Session
6. Action on Items Arising from Executive Session and Action on Salary Merit Increase for President
7. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, 512/219-4550.

Filed: September 16, 1998, 9:50 a.m.

TRD-9814661



Thursday, September 24, 1998, 3:00 p.m.

13809 North Highway 183, Suite 301

Austin

Personnel Committee

AGENDA:

1. Call to order
2. Approval of minutes from January 22, 1998
3. Update on Status of 1998 Incentive Award Program
4. Review and Recommendation for Action on Pension Plan Amendment Concerning Incentive Plans
5. Review and Recommendation for Action on FY99 Incentive Award Plan
6. Adjourn to executive Session: Review and Recommendation for Action on Compensation of Each Individual Senior Management Team Member
7. Resume Open Session
8. Recommendation for Action on Matters Arising From Executive Session
9. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, 512/219-4550.

Filed: September 16, 1998, 9:50 a.m.

TRD-9814662



Friday, September 25, 1998, 9:00 a.m.

13809 North Highway 183, Suite 301

Austin

Board of Directors

AGENDA:

1. Call to order
2. Approval of minutes from May 28, 1998, meeting
3. Report from Lender/School Advisory Committee
4. Report from Executive Committee: Election of Board Officers for FY99
5. Report from Personnel Committee: Report and Action of FY Incentive Award Plan and Action on Resolution to Amend the Pension Plan.

6. Budget/Finance/audit Committee Reports: Report on System Development Project (SDP); Report on Year 2000; Internal Audit Status Report; Presentation and Action on: Proposed FY 99 budget Request; Computer Associates' Maintenance Resolution; Long Distance Service Resolution; Direct Access Storage Device (DASD) Resolution and Internal Audit FY99 Plan

7. Discussion and Action on Execution of a Fixed Price Contract for DMS System Development

8. Reauthorization Update and Report on Possible State Legislation

9. Discussion and Action on Resolution for Contract Execution

10. Discussion and Action on Resolution on Computer Programmer/Analysts

11. Discussion and Action Resolution for Cash Remittance Machine

12. Discussion and Action on Resolution for Human Resources Management System

13. Discussion and Action on Resolution for Revision to Purchasing Policy

14. Discussion and Action on Reserve Language in Lender Participation Agreement

15. Discussion and Action on Resolution to Adopt a List of Qualified, Authorized Brokers

16. President's Report

17. Adjourn to Executive Session: Discussion of Executive Committee's Performance Evaluation of President/CEO; Discussion of Personnel Committee's Merit Salary Increases for Individual Senior Management Team Members; Report on Legal Matters

18. Reconvene Open Session

19. Action on Executive Session Committee's Performance Evaluation of the President/CEO and Merit Salary Increase

20. Action on Personnel Committee's Merit Salary Increases for Individual Senior Management Team Members

21. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, 512/219-4550.

Filed: September 16, 1998, 9:51 a.m.

TRD-9814663



Texas Department of Health

Thursday, September 24, 1998, 10:40 a.m.

650 North Pearl Street, Le Meridien Hotel, Normandy Room

Dallas

End Stage Renal Disease Network, Inc. Medical Review Board

AGENDA:

The board will introduce members and guests and will discuss and possibly act on: review and discussion of proposed changes to the End Stage Renal Disease (ESRD) facilities rules and standards (25 TAC §§117.1-117.85); and public comment (may be limited to three minutes per comment).

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights

at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: S. Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, 512/834-6646.

Filed: September 16, 1998, 9:47 a.m.

TRD-9814656



Friday, October 2, 1998, 9:00 a.m.

Building 2, Room 353, Texas Department of Human Services Region 7, 7901 Cameron Road

Austin

End Stage Renal Disease (ESRD) Facility Task Force

AGENDA:

The Task Force will introduce members and guests and will discuss and possibly act on: approval of the minutes of the June 26, 1998, meeting; review draft proposed End Stage Renal Disease (ESRD) rules and standards, 25 TAC §§117.1-117.85; other issues or concerns regarding the ESRD facility rules and standards (25 TAC §§117.1-117.85); preparation of guidelines for task force members and alternate members; set future meeting dates for the full task force and applicable subcommittees; and public comment (may be limited to three minutes per comment).

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: S. Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, 512/834-6646.

Filed: September 16, 1998, 9:47 a.m.

TRD-9814658



Texas Health Care Information Council

Friday, September 25, 1998, 9:00 a.m.

Brown-Heatly Building, Room 4501, 4900 North Lamar

Austin

Non-Hospital Discharge Data Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's Non-Hospital Discharge Data Technical Advisory Committee will convene in open session, deliberate, and possibly take formal action on the following items: Call to order; approval of minutes; HMO TAC's recommendation to change HEDIS report submission date, rule change; HMO TAC's recommendation to change HEDIS data submission tool; HMO TAC's recommendation to modify data submission through Auditors; HMO TAC's recommendation on service area/minimum enrollment exemptions; HMO TAC's recommendation on what HEDIS measures should be used for the Medicaid population; update on the State HMO HEDIS conference; other business; and adjourn.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Texas 78751, 512/424-6490 or fax 512/424-6491.

Filed: September 15, 1998, 9:38 a.m.

TRD-9814547



Texas Healthy Kids Corporation

Tuesday, September 22, 1998, 9:30 a.m.

333 Guadalupe, Hobby Tower II, Room 400-A

Austin

Board of Directors

AGENDA:

Call to order; approval of minutes of August 26, 1998 meeting. THKC staff presentation, possible recommendations, and possible THKC Board deliberation and action/approval/award regarding: Status update and briefing on enrollment and other program-related activities; Status of the new RFP to be sent out, including issuing separate health and dental RFPs and discussion of possible alternative benefit plan structure(s); Update on the completion of a Management Information Systems contract; Miscellaneous corporate operation issues, including new THJC staff, timelines, future meetings, general updates, other administrative, procedural matters

Public Comment

The THKC Board may meet in Executive Session in accordance with the Texas Open Meetings Act to discuss any matters appropriate for an Executive Session.

Persons with disabilities who require auxiliary aids, services, or materials in alternate format, please contact THKC at least 3 business days before the meeting.

Contact: Tyrette Hamilton, P. O. Box 1506, Austin, Texas 78767-1506, 512/494-0061 or fax 512/494-0278.

Filed: September 11, 1998 1:21 p.m.

TRD-9814419



Texas Higher Education Coordinating Board

Tuesday, September 22, 1998, 2:00 p.m.

Chevy Chase Office Complex, Building 5, Room 5.264, 7745 Chevy Chase Drive

Austin

Coordinating Board

AGENDA:

The Board's Legal Committee will convene and go into Executive Session to discuss pending litigation, specifically, the case south Texas College of Law v. Texas Higher Education Coordinating Board. The meeting will be held by telephone conference call pursuant to the provisions of Texas Government Code, Section 551.125 since the convening at one location of a quorum of the board is difficult or impossible.

Contact: Lynn Rodriguez, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6163.

Filed: September 14, 1998, 8:13 a.m.

TRD-9814461



Wednesday, October 7, 1998, 1:30 p.m.

Chevy Chase Office Complex, Building 1, Room 1.102, 7700 Chevy Chase Drive

Austin

Special Committee to Study the Higher Education Needs of the Central Texas Area North of Austin

AGENDA:

Review a proposal by the Texas A&M University System and Tarleton Station University to establish a university system center in Killeen.

Contact: David Gardner, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6150.

Filed: September 14, 1998, 11:07 a.m.

TRD-9814496



State Independent Living Council

Thursday, September 17, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar

Austin

AGENDA:

9:00 a.m. Call to order (roll call, approval of agenda, approval of minutes)

9:30 a.m. Executive Session (financial, personnel, legal)

12:00 Lunch

1:00 p.m. Report (TRC, TCB, SILC Coordinator)

2:00 p.m. Committee Breakouts: A. Evaluation Committee (Award of Needs Assessment Contract, Content of Statewide Survey); B. Transition Committee (SILC Staff Job Description and Hiring Procedures, New SILC Office Space, SILC Operating Budget)

5:00 p.m. Recess

Contact: John Meinkowsky, 5555 North Lamar, Suite J-125, Austin, Texas 78751, 512/467-0744.

Filed: September 9, 1998, 4:22 p.m.

TRD-9814325



Friday, September 18, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar

Austin

AGENDA:

9:00 a.m. Call to order roll call

9:15 a.m. Public comment

9:45 a.m. Committee Meetings continued A. Executive committee (Proposed Policy and Procedure, Proposed Bylaws Amendments, Receipt of Grant from TRC, Authority to Make Payment); B. Evaluation Committee (Award of Needs Assessment Contract, Content of Statewide Survey); C. Transition Committee (SILC Staff Job Description and Hiring Procedures, New SILC Office Space, SILC Operating Budget)

12:00 Lunch

1:00 p.m. Committee Reports and Action on Recommendations

3:00 p.m. Adjourn

Contact: John Meinkowsky, 5555 North Lamar, Suite J-125, Austin, Texas 78751, 512/467-0744.

Filed: September 9, 1998, 4:22 p.m.

TRD-9814324



Monday, October 12, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar

Austin

AGENDA:

9:00 a.m. Call to order (roll call, approval of agenda, approval of minutes)

9:30 a.m. Report (TRC, TCB, SILC Coordinator)

10:00 a.m. SILC Office Space

10:30 a.m. Proposed Bylaws Amendments, Policy and Procedures

11:00 a.m. Public Comment

12:00 p.m. Lunch

1:00 p.m. Vote on Bylaws Amendments, Policy and Procedures

2:00 p.m. Committee Breakouts

A. Outreach Committee

B. Education Committee

C. IL Centers and Services Committee

D. Interagency Relationships Committee

E. Finance Committee

F. Evaluation Committee

G. Transition Committee

5:00 p.m. Recess

Contact: John Meinkowsky, 5555 North Lamar, Suite J-125, Austin, Texas 78751, 512/467-0744.

Filed: September 16, 1998, 9:01 a.m.

TRD-9814639



Tuesday, October 13, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar

Austin

AGENDA:

9:00 a.m. Full Council Meeting (call to order, roll call)

9:15 a.m. Schedule and Location of Future Meetings

10:00 a.m. Guests: IL Center directors (Tentative)

12:00 p.m. Lunch

1:00 p.m. Committee Reports

3:00 p.m. Adjourn

Contact: John Meinkowsky, 5555 North Lamar, Suite J-125, Austin, Texas 78751, 512/467-0744.

Filed: September 16, 1998, 9:01 a.m.

TRD-9814638



Texas Department of Insurance

Tuesday, October 13, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-97-0215.C. To consider the application of Oscar H. Rodriguez, Texas and Carrollton, Texas for a Solicitor's License to be issued by the Texas Department of Insurance (reset from May 27, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: September 15, 1998, 2:30 p.m.

TRD-9814587



Tuesday, October 13, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-1348. In the matter of Fidelity National Title (reset from September 17, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: September 15, 1998, 2:30 p.m.

TRD-9814586



Texas Juvenile Probation Commission

Friday, September 25, 1998, 9:30 a.m.

4900 North Lamar Boulevard, Room 5501

Austin

Budget Committee

AGENDA:

Call meeting to order; excuse absences; discuss and possibly act on adjustments to the FY 98 administrative budget; discuss and possibly act on adjustments to the FY 99 administrative budget; discuss and possibly act on adjustments to the FY 99 contract budget; hear a report on the legislative appropriations request; hear FY 98 internal audit report; approve resolution accepting substance abuse training grant funds; consider and possibly act on a proposal to spend unencumbered FY 98 JJAEP funds; hear public comments; adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or Braille, are requested to call Karla Cantu at 512/424-6682 at least two days prior to the meeting so that the appropriate arrangements may be made.

Contact: Glenn Neal, 4900 North Lamar, Room 5501, Austin, Texas 78751, 512/424-6681.

Filed: September 14, 1998, 4:46 p.m.

TRD-9814530



Friday, September 25, 1998, 10:00 a.m.

4900 North Lamar Boulevard, Room 5501

Austin

Program and Planning Committee

AGENDA:

Call meeting to order; excuse absences; discuss and possibly act on final adoption or resubmission of Case Management Standards; discuss and possibly act on final adoption or resubmission of JJAEP standards; hear public comments; adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or Braille, are requested to call Karla Cantu at 512/424-6682 at least two days prior to the meeting so that the appropriate arrangements may be made.

Contact: Glenn Neal, 4900 North Lamar, Room 5501, Austin, Texas 78751, 512/424-6681.

Filed: September 14, 1998, 4:46 p.m.

TRD-9814531



Friday, September 25, 1998, 10:45 a.m.

4900 North Lamar Boulevard, Room 5501

Austin

Board Meeting

AGENDA:

Call meeting to order; excuse absences; approve board minutes from June 18, 1998 meeting; hear budget committee report and possibly take action on committee recommendations; hear program and planning report and possibly take action on committee recommendations; discuss commitments to TYC; hear legal/legislative update; introduce new staff; hear director's report; schedule next meeting; hear public comment; adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for person who are deaf or hearing impaired, readers, large print or Braille, are requested to call Karla Cantu at 512/424-6682 at least two days prior to the meeting so that the appropriate arrangements may be made.

Contact: Glenn Neal, 4900 North Lamar, Room 5501, Austin, Texas 78751, 512/424-6681.

Filed: September 14, 1998, 4:46 p.m.

TRD-9814532



Texas Department of Licensing and Regulation

Tuesday, September 22, 1998, 9:30 a.m.

920 Colorado, E.O. Thompson Building, 1st Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Jerry Hamel, for 9 counts of failing to provide proper installation, service, and mechanical integrity in violation Tex. Rev. Civ. Stat. Ann. Articles 8861 §5(a), pursuant to Tex. Rev. Civ. Stat. Article 9100, the Texas Gov't Code, §2001 and 16 TAC §60.

Contact: Rick Wootton, 920 Colorado, E.O. Thompson Building,
Austin, Texas 78701, 512/463-3192.
Filed: September 14, 1998, 3:41 p.m.

TRD-9814568



Wednesday, September 23, 1998, 9:30 a.m.

920 Colorado, E.O. Thompson Building, 1st Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Dallas T. Lesley, for 2 counts of failing to provide proper installation, service, and mechanical integrity in violation Tex. Rev. Civ. Stat. Ann. Articles 8861 §5(a), and for failing to include "Regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1/800/803-9202 or 512/463-6599" on a proposal for claimant, pursuant to Tex. Rev. Civ. Stat. Article 9100, the Texas Gov't Code, §2001 and 16 TAC §§60, 75.70(n).

Contact: Rick Wootton, 920 Colorado, E.O. Thompson Building,
Austin, Texas 78701, 512/463-3192.
Filed: September 14, 1998, 3:41 p.m.

TRD-9814524



Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Tuesday, September 22, 1998, 10:00 a.m.

301 Congress, Suite 500

Austin

Governance Committee

AGENDA:

1) Approval of minutes; 2) Consideration of counsel applicants; 3) Executive Session; 4) Consideration and possible action on Executive matters; 5) Discussion of other matters; 6) Setting of next meeting.

Contact: C.S. LaShelle, 301 Congress, #500, Austin, Texas 78701,
512/475-5101.

Filed: September 14, 1998, 2:33 p.m.

TRD-9814507



Texas State Board of Medical Examiners

Wednesday, September 16, 1998, 2:00 p.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Disciplinary Panel

EMERGENCY MEETING AGENDA:

Call to order; roll call; consideration of the Application for Temporary Suspension of the license of Theodore Bowles, Jr., DO. License H-7392, and adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b), 2.09(o), Texas Revised Civil Statutes, to consult with counsel with counsel regarding pending or contemplated litigation.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: September 15, 1998, 10:37 a.m.

TRD-9814551



Friday, September 25, 1998, 10:00 a.m.

Conference Room 291, Haynes and Boone Law Firm, 901 Main Street, 29th Floor

Austin

AGENDA:

The panel will introduce members and guests and will discuss and possibly act on: approval of minutes of June 5, 1998, meeting; two physician vacancies and replacement; review of specific procedures requiring full disclosure 25 TAC, Chapter 601 (§601.2(b) Cardiovascular System; §601.2(d) Ear Treatments and Procedures; §601.2(f) Eye Treatments and Procedures; and §601.2(s) Endoscopic Surgery); other issues relating to rules (25 TAC, §§601.1-601.8) concerning informed consent; clarification request from Metroplex Adventist Hospital; public comment (may be limited to three minutes); and setting the next meeting date for the Panel.

For ADA assistance, call Suzzanna C. Currier 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: S. Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756,
512/834-6646.

Filed: September 16, 1998, 9:47 a.m.

TRD-9814657



Texas Natural Resource Conservation Commission

Wednesday, September 23, 1998, 8:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Executive Sessions

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: September 11, 1998, 2:00 p.m.

TRD-9814426



Wednesday, September 23, 1998, 9:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Hearing Request; Amendment to Water Rights Permits; Authorization to Construct; Temporary Variance; Permit Renewal; Temporary Order; Miscellaneous; Municipal solid Waste Nominations and Appointments of an Elected Official; Public Water Supply Enforcement Agreed Order; Industrial Waste Discharge Enforcement Agreed Order; Agricultural Enforcement Agreed Orders; Air Enforcement Agreed Orders; Air Enforcement Default Order; Petroleum Storage Tank Enforcement Agreed Orders; Municipal Aside an Emergency Order; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda starts 8:45 until 9:25)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: September 11, 1998, 3:09 p.m.

TRD-9814429



Wednesday, September 23, 1998, 9:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

REVISED AGENDA:

The Commission will consider approving the following item on the second addendum to agenda. Irrigators Advisory Council.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: September 15, 1998, 3:39 p.m.

TRD-9814623



Wednesday, September 23, 1998, 1:00 p.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Proposals for Decisions. (Registration for the 1:00 p.m. will start at 12:30 until 12:55 p.m.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: September 11, 1998, 3:26 p.m.

TRD-9814431



Wednesday, September 30, 1998, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Suite 1100

Austin

REVISED AGENDA:

An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing that will allow Robert Lueck dba Lueck Dairy, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has

occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. This matter has been designated as SOAH Docket No. 582-98-1620.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3445.

Filed: September 14, 1998, 2:58 p.m.

TRD-9814513



Friday, October 2, 1998, 2:00 p.m.

City Hall, 1625 13th Street, Room 107

Lubbock

AGENDA:

Office of the Chief Clerk

For an informal public hearing concerning an application by Mr. David A. Fleming, General Partner of Executive Golf Ltd. at 2402 52nd Street, Lubbock, Texas 79412, Texas Natural Resource Conservation Commission (TNRCC) for the proposed Permit No. MSW-CP 62,006 to authorize the construction of an enclosed structure over a closed MSW landfill. The proposed construction is a 3200 sq. ft. Golf Clubhouse on a 0.62 acre tract of land situated at Northeast of the intersection Quaker Avenue at 78th Street, within city limits of Lubbock, Lubbock County, Texas. The property is located within a 10.3 acre golf course atop a closed municipal solid waste landfill.

Contact: Eugenia K. Brumm, Ph.D., P.O. Box 13087, Austin, Texas 78711-3087, 1/800/687-4040.

Filed: September 11, 1998, 4:59 p.m.

TRD-9814457



Tuesday, October 6, 1998, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Suite 1100

Austin

REVISED AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing addressing Cypress Village Water System which filed a statement of change in water rates with the Texas Natural Resource Conservation Commission (Commission) effective August 1, 1998, for its service area located in Harrison County, Texas. This matter has been designated as SOAH Docket No. 582-98-1368.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3345.

Filed: September 16, 1998, 11:15 a.m.

TRD-9814671



Board of Nurse Examiners

Wednesday, September 23, 1998, 9:30 a.m.

Hobby Building, 333 Guadalupe, Tower II, Room 2-225

Austin

Law and Regulations Advisory Committee

AGENDA:

9:30 a.m. Call to order; roll call

9:45 a.m. Review of July 8, 1998 meeting minutes

10:15 a.m. Old business: 1. Report to Board at July 16 meeting; 2. Survey Results; 3. Subcommittee for entry level RN; 4. Revised Time Line

12:00 Working lunch

1:00 p.m. New Business: 1. Consider methods for review of laws and regulations for practicing RN's and mechanisms for assurance of understanding.

3:00 p.m. Adjourn

Contact: Mitchell Diaz, P.O. Box 430, Austin, Texas 78767-0430, 512/305-6844.

Filed: September 9, 1998, 4:22 p.m.

TRD-9814322



Texas On-Site Wastewater Treatment Research Council

Thursday, September 24, 1998, 10:00 a.m.

12100 Park 35 Circle, Building A, Conference Room 172

Austin

Council Meeting

AGENDA:

The Council will act on the minutes of the previous meeting. The Chairman and the Executive Secretary will provide their reports followed by discussion and possible action on the FY98-FY99 budgets. A discussion and possible action on the location and planner selection for the 1999 Annual On-site Wastewater Treatment Research Council Conference will follow. The floor will then be open for public comments. Other items on the agenda will include: discussion and possible action on (1) the selection of a committee to review the Council's rules under 30 TAC, Chapter 286 for any possible changes as required by Article IX, §167 of House Bill 1, the General Appropriations Act; (2) the prioritized proposal topics previously selected as possible projects (tabled from the last meeting) to determine if request for proposals or contracts need to be pursued. Topics include: a study to determine long term infiltration rate of effluent to level of pretreatment for different soils and disposal systems; a quantitative evaluation of caliche soil as a treatment media for on-site sewage facility systems; and an evaluation of the effectiveness of an existing subsurface drip irrigation system in swelling soils. The scheduling of future meetings will end the meeting.

Contact: Annette Maddern, TNRCC, MC 178, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-5304.

Filed: September 10, 1998, 3:08 p.m.

TRD-9814356



Texas Board of Orthotics and Prosthetics

Thursday, September 24, 1998, 8:00 a.m.

Exchange Building, Room S402, 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 September 3, 1998, meeting; presiding officer's report; executive director's report; review, discussion, and action on comments received during the public comment period concerning proposed rules relating to the regulation of Orthotics and Prosthetics, 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; examination contract; review on passing score participants; 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: September 16, 1998, 12:04 p.m.

TRD-9814686



Executive Council on Physical Therapy and Occupational Therapy Examiners

Monday, September 21, 1998, 10:00 a.m.

Harris County Department of Education, 6300 Irvington Boulevard
Houston

AGENDA:

I. Call or order

II. Public comment

III. Approval of minutes of June 22, 1998 Executive Council meeting

IV. Discussion and possible action on proposed amendments to Texas Board of Occupational Therapy Examiners rules, including §362.1, concerning definitions, §365.1, concerning Types of Licenses, §366.1, concerning Application for License, §367.1, concerning Continuing Education, §370.1, concerning License Renewal, and §371.1, concerning Inactive Status.

V. Discussion and possible action on setting administrative fees for sales of goods and services.

VI. Discussion and possible action concerning regulations of facilities providing therapy and/or occupational therapy.

VII. Discussion and possible action concerning proliferation of schools offering therapy and occupation therapy programs.

VIII. Discussion and possible action on the agency's Strategic Plan.

IX. Discussion and possible action on Executive Director's Report.

X. Discussion and possible action on Presiding Officer's Report

XI. Discussion and possible action on scheduling future Executive Council meeting date, and items for future consideration.

XII. Adjournment.

Contact: Jennifer Jones, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942.

Filed: September 11, 1998, 1:58 a.m.

TRD-9814425



Public Utility Commission of Texas

Wednesday, September 23, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project No. 16251; Docket Nos. 19000, 19621, and 19461; Tariff Control No 19758; Docket Nos. 16938, 16948, 17128, 17176, 17191, 17195, 19468, 17998, 19601, 19629, 19630, 19631, 19641, 19643, 19657, 19660, 19663, 19665, 19538, 19539, 19550, 19574, 19576, and 19581.; Project Nos. 18886, 19813, 18702, 18515, 18516, 18438, 19699, and 16901; Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission; Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Interim approval of interconnection agreements; Project No. 18000; Election utility reliability and customer service; Docket Nos. 19834, 19820, 19826, 18845, 19793, and 19250; Project Nos 18703, 19761, 19693, 17709; Customer service issues, including but not limited to correspondence and complaints issues Operating Budget, Appropriations Request, Agency Business Plan, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Project No. 18491, Year 2000 Project for the Public Utility Commission; Adjournment for closed session to consider litigating and personnel matters; Reconvene for discussion of decisions on matters considered in closed session.

Contact: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: September 15, 1998, 3:35 p.m.

TRD-9814613



Friday, September 25, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project No. 18515, Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan.

Contact: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: September 15, 1998, 8:47 a.m.

TRD-9814535



Monday, October 5, 1998, 8:30 a.m.

8012 Shin Oak Drive, Judson ISD Administrative Office

San Antonio

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: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: September 16, 1998, 9:44 a.m.

TRD-9814650



Texas Racing Commission

Wednesday, September 23, 1998, 10:30 a.m.

1101 Camino La Costa, Room, 235

Austin

AGENDA:

Call to order; roll call; consideration of and action on the following rules §§305.4, 305.7, 305.35, 309.200, Chapter 319, §§307.8, 309.3, 309.4, Chapter 301, Chapter 303; Consideration of and action on the following petition for rulemaking: Petition by the Texas Horsemen's Partnership, L.L.P. for amendment to §309.199; Consideration of and action on the following matter: Appointment of advisory committee regarding the selection of a laboratory under Texas Racing Act, VTCS Article 179e, §3.07(d); Consideration of and action on the following matters: Request by Lone Star Park at Grand Prairie for approval of a Special Wager, Request by the Texas Thoroughbred Association to have Lone Star Park and Grand Prairie, Sam Houston Race Park and Retama Race Park demonstrate financial need of funds received under §321.234(b), Allocation of the Texas Bred Incentive Program Fund among the Texas Appaloosa Horse Club, Texas Arabian Breeders Association and the Texas Pint Horse Association for calendar year 1998, Distribution of funds accrued in the escrowed purse account pursuant to §321.210, and report on racetrack inspections; Old and New Business; Adjourn.

Contact: Roselyn Marcus, P.O. Box 12080, Austin, Texas 78711, 512/833-6699.

Filed: September 15, 1998, 3:36 p.m.

TRD-9814614



Railroad Commission of Texas

Tuesday, September 22, 1998, 9:00 a.m.

1701 North Congress, 1st Floor Conference Room 1-111

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711, 512/463-6729.

Filed: September 11, 1998, 4:59 p.m.

TRD-9814458



Tuesday, September 22, 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 item 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: September 11, 1998, 4:59 p.m.

TRD-9814459



School Land Board

Tuesday, September 15, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue

Austin

Board

EMERGENCY REVISED AGENDA:

Consideration of emergency procedures for bays and estuaries along the Gulf Coast in connection with Tropical Storm Frances.

Reason for emergency: Urgent public necessity in connection with Tropical Storm Frances.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, 512/463-5016.

Filed: September 14, 1998, 4:52 p.m.

TRD-9814533



Council on Sex Offender Treatment

Sunday, October 4, 1998, 8:30 a.m.

Ballroom B, The Omni, 9821 Colonnade Boulevard

San Antonio

AGENDA:

Clinical Issues Committee

The committee will introduce members, guests and staff and will discuss and possibly act on: approval of the minutes of the July 22, 1998 meeting; report from (Civil Commitment Subcommittee; Polygraph Data Subcommittee; and the Training Issues Subcommittee); update on the revised adult and juvenile tracking system; other matters not requiring committee action; public comment; future agenda items and meeting dates for the committee.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kelly Page or Tamala Tatum, 1100 West 49th Street, Austin, Texas 78756, 512/834-4530.

Filed: September 16, 1998, 12:04 p.m.

TRD-9814684



Sunday, October 4, 1998, 10:00 a.m.

Ballroom B, The Omni, 9821 Colonnade Boulevard

San Antonio

AGENDA:

Joint Meeting of the Council on Sex Offender Treatment and the Interagency Advisory Committee

The council and advisory committee will introduce members, guests and staff and will discuss and possibly act on: approval of the minutes of the July 22, 1998 meeting; division director's report; executive director's report; Clinical Issues Committee's report; reports from (Civil Commitment Subcommittee; Polygraph Data Subcommittee; and the Training Issues Subcommittee); a registrant's request to place registration in inactive status; location for the 1999 adult conference; review of expenses and procedures for obtaining criminal history records on registrants; other matters not requiring council or committee action; public comment; future agenda items and future meeting dates for the council and advisory committee.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kelly Page or Tamala Tatum, 1100 West 49th Street, Austin, Texas 78756, 512/834-4530.

Filed: September 16, 1998, 12:04 p.m.

TRD-9814685



Special Board of Review

Monday, September 28, 1998, 5:30 p.m.

Stephen F. Austin Building, 1700 North Congress, Room 118

Austin

Board

AGENDA:

I. Call to order; II. Chairman's Remarks; III. Public Testimony; IV. Discussion of, and Action on, proposed "Triangle Square Development Plan, "and/or amendments thereto, or proposed alternatives thereto, including zoning and subdivision issues; IV. Adjournment

The Board may take agenda items out of order in its discretion.

Contact: Ken Mills, 1700 North Congress Avenue, Room 626, Austin, Texas 78701, 512/305-9108.

Filed: September 15, 1998, 1:41 p.m.

TRD-9814566



Stephen F. Austin State University

Friday, September 18, 1998, 11:00 a.m.

1936 North Street, First Land's Room, University Center

Nacogdoches

Board of Regents: Building Grounds Committee

AGENDA:

I. Review bids for renovation of Miller Science Building

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: September 15, 1998, 10:56 a.m.

TRD-9814553



Friday, September 18, 1998, 12:30 p.m.

1936 North Street, President's Suite, University Center

Nacogdoches

Board of Regents

REVISED AGENDA:

The Agenda was not revised, but the meeting location was changed.

I. Housing Report

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: September 15, 1998, 10:57 a.m.

TRD-9814554



Board of Tax Professional Examiners

Monday, October 5, 1998, 9:30 a.m.

William P. Hobby, Jr., State Office Building, 333 Guadalupe Street, Tower II, Suite 520

Austin

AGENDA:

1. 9:30 a.m. Call to order
2. Determine the presence of a quorum, recognition of visitors
3. Review of board minutes for June 16, 1998 regular quarterly meeting.
4. Discussion action on complaints received by the Board.
5. Update on education program.
6. Discussion action or vote on accepting a new text for Assessing and Collecting (non-Appraisal) Courses.
7. Discussion action or vote on Policy and Procedures changes in the Property Tax Education Standards.
8. Discussion action or vote on Policy and Procedure paragraph 1a, Persons Required to Register and definition of Actively Engaged.
9. Adjourn

Contact: David E. Montoya, 333 Guadalupe Street, Tower 2, Suite 520, Austin, Texas 78701-3942, 512/305-7300.

Filed: September 15, 1998, 10:38 a.m.

TRD-9814552



Monday, October 5, 1998, 1:00 p.m.

William P. Hobby, Jr., State Office Building, 333 Guadalupe Street, Tower II, Suite 500

Austin

AGENDA:

1. 1:00 p.m. Call to order
2. Determine the presence of a quorum, recognition of visitors
3. Approval of board minutes for June 16, 1998 regular quarterly meeting.
4. Discussion and appropriate action on complaints received by the Board.
5. Update on education program.
6. Discussion and appropriate action or vote on accepting a new text for Assessing and Collecting (non-Appraisal) Courses.
7. Discussion and appropriate action or vote on Policy and Procedures changes in the Property Tax Education Standards.
8. Discussion and appropriate action or vote on Policy and Procedure paragraph 1a, Persons Required to Register and definition of Actively Engaged.
9. Executive Director's report.
10. Discussion and appropriate action or vote on list registrants that have met all requirement for reclassification/Recertification since last regular quarterly meeting.
11. Public comments on any relevant subject will be received, however, due to Open Meetings restrictions, discussion is limited to placing item on agenda for next board meeting.
12. Determine date for next quarterly meeting.
13. Adjourn

Contact: David E. Montoya, 333 Guadalupe Street, Tower 2, Suite 520, Austin, Texas 78701-3942, 512/305-7300.

Filed: September 15, 1998, 10:37 a.m.

TRD-9814549



Teacher Retirement System of Texas

Wednesday, September 23, 1998, 8:00 a.m.

1000 Red River, 5th Floor Boardroom

Austin

Board of Trustees Audit Committee

AGENDA:

1. Discussion of Employment of Director of Internal Audit and Interviews of Candidates for the Position.
2. Consideration of Recommendation for Employment of and Salary for the Director of Internal Audit.

For ADA assistance, contact John R. Mercer, 512/397-6400 or TDD 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: September 15, 1998, 2:31 p.m.

TRD-9814590



Wednesday, September 23, 1998, 3:00 p.m.

1000 Red River, 5th Floor Boardroom

Austin

Board of Trustees

AGENDA:

1. Roll Call of Board Members
2. Public Comments
3. Consideration of Employment of and Salary for the Director of Internal Audit-Mr. Cummings

For ADA assistance, contact John R. Mercer, 512/397-6400 or TDD 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: September 15, 1998, 2:31 p.m.

TRD-9814589



Texas State University System

Wednesday, September 23, 1998, 10:00 a.m.

Conference Room of Building B. John Gray Center, Lamar University-Beaumont

Austin

Presidential Selection Advisory Committee for LU-B

AGENDA:

Consideration of any and all subjects leading to selection of a president at Lamar University-Beaumont. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.

Contact: Lamar Urbanovsky, 200 East 10th Street, Austin, Texas 78701, 512/463-1808.

Filed: September 16, 1998, 9:44 a.m.

TRD-9814649



Texas Department of Transportation

Thursday, September 24, 1998, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Commission

AGENDA:

Delegations: City of Mineola and opponent; Nocona Chamber of Commerce; City of Dublin Loop Task Force and opponent; Metroport Cities (Tarrant and Denton Counties). Approve minutes. Rulemaking: 43 TAC Chapter 4, 5, 6, 9, 15, 25 and 28, and Rule Review, Ch. 31 Programs: Approve 1999 Unified Transportation Program. Transportation Planning: Galveston County-evaluate Bolivar Peninsula Ferry Operations. Public Transportation. State Infrastructure Bank: Motley County. Contract Award/Rejections/Defaults/Assignments/Claims. Contested Case. Routine Minute Orders. Appointment of Director of Texas Turnpike Authority Division. Executive Session for legal counsel consultation, land acquisition matters, personnel matters and appointment of director of Texas Turnpike Authority Division. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: September 16, 1998, 11:21 a.m.

TRD-9814677



University of Houston System

Monday, September 21, 1998, 8:00 a.m.

3100 Cullen Boulevard, UH Athletic/Alumni Facility, Melcher Board Room

Houston

Committee Meetings

AGENDA:

Academic and Student Affairs Committee-1. Call to Order; 2. Bachelor of Science in Computer engineering; 3. Bachelor of Science in Engineering Technology (BSET) Degree with Option in Safety and Fire; 4. Creation of Department of Criminal Justice; 5. Report of Contracts and Grants-October 1998; 6. Adjourn.

Institutional Advancement and external Affairs Committee- 1. Call to Order; 2. Report on Community Relations Activities and Plans; 3. Overview of Private Support; 4. Adjourn.

Administration and Finance Committee-1. Call to Order; 2. Purchase Order with National Public Radio; 3. Architectural Schematic Design and Project planning Guide for the New Policy Building; 4. Architectural Schematic Design and Project Planning Guide for the fine Arts Renovation; 5. Award of a Construction Contract for the FY99 Capital Renewal and Deferred Maintenance HVAC/Plumbing Project; 6. Replacement of the Athletic Flooring in the Field House and Weight Room of the Athletics/Alumni Facility; 7. Construction on a None-lane Olympic Track and Field Complex; 8. Architectural Schematic Design and Project Planning Guide for the One Main Building Third Floor Renovation; 9. Abatement of Lead Paint on Decks at the One Main Building; 10. Restoration of Decks at the One Main Building; 11. Project Planning Guide for Initial Facility/Academic Building at Fort Bend; 12. Interlocal Cooperation Act Contract with Victoria College for FY98-99; 13. Status and Plans for the Enhancement of Information Technology Services; 14. Acquisition of Administrative Computing Systems; 15. Personnel Action for Executive Management Employees; 16. Consolidated Revenue Bonds, Series 1999; Bond Resolution, Preliminary Official Statement and Official Notice of Sale; 17. Withdrawal from the KUHT Quasi Endowment; 18. Withdrawal from the KUHT Capital Improvements Quasi Endowment; 19. Annual Write-Off of Accounts/Notes Receivable; 20. Revision of Board Policies 43 through 47; 21. Endowment Performance Report as of June 30, 1998; 22. Report of Investment Performance of Pooled Non-Endowed Funds as of June 30, 1998; 23. Report on Separately Invested Funds as of June 30, 1998; 24. Construction Project Status; 25 Adjourn.

Executive Committee- 1. Call to Order; 2. Executive Session; 3. Report from Executive Session; 4. Executive Summaries of Internal Audit Reports; 5. Adjourn.

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas 77204-6732, 713/743-3444.

Filed: September 14, 1998, 4:19 p.m.

TRD-9814529



University of Texas System

Tuesday, September 15, 1998, 9:00 a.m.

1515 Holcombe Boulevard, Room B8-4344

Houston

M.D. Anderson Cancer Center Institutional Animal Care and Use Committee

AGENDA:

Review of Protocols for Animal Care and Use and Modifications thereof.

Contact: Leonard Zwelling, M.D. Anderson Cancer Center, 1515 Holcombe Boulevard, P.O. Box 307, Houston, Texas 77303, 713/792-3220.

Filed: September 10, 1998, 3:17 p.m.

TRD-9814359



Tuesday, September 22, 1998, 4:30 p.m.

500 University, Administration, Fifth Floor, President's Conference Room

El Paso

U.T. El Paso-Institutional Animal Care and Use Committee

AGENDA:

I. call to order by chairman, Dr. Donald E. Moss

II. Approval of the June 23, 1998, Meeting Minutes

III. Status Report on New animal Quarantine Room In the Biological Sciences Building

IV. Approval of Cage Labels

V. Other business

Contact: Karen Hoover, Office of Research and Sponsored Projects, Administration Building Room 209, The University of Texas at El Paso, Texas 79968, 915/747-7939 or fax 915/747-6474.

Filed: September 9, 1998, 2:47 p.m.

TRD-9814304



Veterans Land Board

Wednesday, September 23, 1998, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

Board

AGENDA:

Approval of previous board meeting minutes; consideration of an amendment to the State Veterans Home Development Agreement, §16.1(g) and §17.3; consideration of forfeiture action on delinquent Veterans Land Program accounts; consideration of forfeiture action on Veterans Land Program accounts in property tax suites; consideration of resolution by the Veterans Land Board of the State of Texas authorizing preliminary matters in connection with the proposed issuance and sale of one or more series of revenue bonds to finance the acquisition and construction of Veterans Homes; consideration of modification of lending rates the post-1976 veterans in the Veterans' Housing Association Program; and staff reports.

Contact: Linda K. Fisher, 1700 North Congress, Room 836, Austin, Texas 78701, 512/463-5016.

Filed: September 11, 1998, 4:28 p.m.

TRD-9814449



Texas Board of Veterinary Medical Examiners

Wednesday, September 20, 1998, 1:00 p.m.

William P. Hobby Building, 333 Guadalupe, Tower 2, Room 400

Austin

Board Monitoring Program Committee

AGENDA:

The Committee will meet to determine their role and the scope of their responsibilities in reporting to the full Board in the areas of General Performance of Board and Staff, Budgets, and Audits, and Compliance with Board Orders and Peer Assistance.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701, 512/305-7555.

Filed: September 11, 1998, 11:55 a.m.

TRD-9814416



Friday, October 2, 1998, 8:30 a.m.

William P. Hobby Building, 333 Guadalupe, Tower 2, Room 225

Austin

Rules Committee

AGENDA:

The Committee will discuss and take action of Rules of Profession Conduct 573.20, 573.24, 573.52, 573.64, and 573.65. A new rule concerning Animal Dentistry will also be discussed with possibly acted on.

Persons requiring reasonable accommodations are requested to 333 Guadalupe, #2-330, Austin, Texas 78701-3998, 512/305-7555 or TDD 1/800/735-2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701, 512/305-7555.

Filed: September 11, 1998, 11:55 a.m.

TRD-9814417



Texas Water Resources Finance Authority

Thursday, September 17, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

AGENDA:

1. Consider approval of the minutes of the meeting of August 19, 1998

2. Consider selection of bond counsel.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: September 9, 1998, 1:41 p.m.

TRD-9814302

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Texas Workers' Compensation Commission

Wednesday, September 16, 1998, 10:00 a.m.

4000 South IH35, Room 910-911, South Building

Austin

Public Hearing

AGENDA:

1. Call to order
2. Public comments on the following proposed amended and new rules:

Chapter 164. Extra-Hazardous Employer Program

Rule 164.1. Criteria for Identifying Extra-Hazardous Employers

Rule 164.2. Notice to Extra-Hazardous Employers

Rule 164.3. Safety Consultation for Public Employers

Rule 164.4. Formulation of Accident Prevention Plan for Public Employers

Rule 164.5. Follow-up Inspection for Public Employers by the Division

Rule 164.6. Report of Follow-up Inspection, Public Employers

Rule 164.7. Removal of Public Employers from Extra-Hazardous Employer Status

Rule 164.8. Continuation of Extra-Hazardous Employer Status, Public Employers

Rule 164.10. Removal from the List of Approved Professional Sources

Rule 164.11. Request for Safety Consultation from the Division

Rule 164.12. Reimbursement of Division for Services Provided to "Extra-Hazardous Employer"

Rule 164.14. Values Assigned for Computation of Extra-Hazardous Employer Identification

Rule 164.15. Administrative Reviews and Hearings Regarding Identification as a Extra-Hazardous Employer

Rule 164.16. Removal of Private Employers from Extra-Hazardous Employer Status (new)

Rule 164.17. Availability of OSHCON Services (new)

Rule 164.18. Severability (new)

Contact: Linda McKee, 4000 South IH35, Austin, Texas 78704, 512/440-5690.

Filed: September 9, 1998, 2:48 p.m.

TRD-9814307

tion Docket 38; Discussion, consideration and possible action: (1) on acceptance of pledges of Child Care Matching Funds; (2) concerning the proposed Child Care Rules (40 TAC Chapter 809); (3) on the proposed rule revision concerning the Child Care Allocation Rule (40 TAC, Chapter 800, §800.56); (4) on the adoption of the proposed amendments to the Unemployment Insurance Rules concerning Signatures on Reports and Forms (40 TAC, Section 815.8); (5) on the adoption of the proposed amendments to the Unemployment Insurance Rules concerning Technical Corrections (40 TAC, Chapter 815); (6) on the PY98 JTPA Incentives Policy Amendment and Workflex Partnership and Demonstration program; (7) on the PY97 JTPA Fourth Quarter Interim Performance Report; (8) regarding potential and pending applications for certification and recommendations to the governor of Local Workforce Development Boards for Certification; (9) regarding recommendations to TCWEC; and status of status of strategic and operational plans submitted by Local Workforce Development Boards; (10) regarding recommendations to TCWEC; and (11) regarding approval of Local Workforce Board or Private Industry Council Nominees; General discussion and staff report concerning the Employment Service and related functions at the Texas Workforce Commission; Discussion, consideration and possible action relating to House Bill 2777 and the development and implementation of a plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; Staff report and discussion-update on activities relating to: Administrative Support Division, Technology and Facilities Management Division, Unemployment Insurance and Regulation Division, Workforce Development Division, and Welfare Reform Initiatives Division; Executive Session pursuant to: Government Code §551.074 to discuss the duties and responsibilities of the executive staff and other personnel; Government Code §551.071(1) concerning the pending or contemplated litigation of the Texas AFI-CIO v. TWC; Pat McCowan, Betty McCoy, Ed Carpenter, and Lydia DeLeon Individually and on Behalf of Others Similarly Situated v. TWC et al; TSEU/CWA Local 6186, AFL-CIO, Lucinda Robles, and Maria Roussett v. TWC et al; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); Gene E. Merchant et al. v. TWC; and TWC v. Antonini and Associates; Government Code §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act; Actions, if any, resulting from executive session; Consideration, discussion, questions, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 38.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-8812.

Filed: September 14, 1998, 3:40 p.m.

TRD-9814523

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Tuesday, September 22, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Approval of prior meeting notes: Public comment; consideration and action on Tax Liability Cases listed on Texas Workforce Commis-

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Regional Meetings

Meetings filed September 9, 1998

Golden Crescent Workforce Development Board, Welfare-to-Work Ad-Hoc Committee met at 1502 East Airline, Suite 39, Victoria, September 14, 1998, at 3:30 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9814305.

Hockley County Appraisal District, Appraisal Review Board met at 1103 Houston Street, Levelland, September 15, 1998, at 7:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336-1090, 806/894-9654. TRD-9814323.

Lometa Rural Water Supply Corporation, Board of Directors met at 506 West Main Street, Lometa, September 14, 1998, at 7:00 p.m. Information may be obtained from Levi G. Cash, III or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, 512/752-3505. TRD-9814303.

Lower Neches Valley Authority, Board of Directors met at 7850 Eastex Freeway, Beaumont, September 15, 1998, 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-9814331.

North Texas Regional Library System, System Assembly Meeting met at 600 11th Street, Wichita Falls, September 24, 1998, at 9:00 a.m. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, 817/335-6076. TRD-9814326.

Meetings filed September 10, 1998

Aqua Water Supply Corporation, Board of Directors met at 305 Eskew, Bastrop, September 14, 1998, at 7:30 p.m. Information may be obtained from Carol K. Ducloux, P.O. Drawer P, Bastrop, Texas 78602, 512/303-3943. TRD-9814424.

Atascosa County Appraisal District, Board of Directors met at 4th and Avenue J. Poteet, September 17, 1998, at 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, 830/742-3591. TRD-9814342.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Bastrop, September 17, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9814399.

Bastrop Central Appraisal District, Board of Directors met at 1200 Cedar Street, Bastrop, September 17, 1998, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9814400.

Dallas Housing Authority, Dallas Housing Authority Board of Commissioners met at Barbara Jordan Square, Community Center, 4700 Country Creek Drive, Dallas, September 17, 1998, at 4:00 p.m. Information may be obtained from Elizabeth Horn, 3939 North Hampton Road, Dallas, Texas 75212, 214/951-8302. TRD-9814354.

Deep East Texas Local Workforce Development Board, Nomination Committee met at 300 East Shepherd Avenue, Room 202, Lufkin, September 22, 1998, at 1:30 p.m. Information may be obtained from Billy Junge, P.O. Drawer N, Diboll, Texas 75941, 409/829-1657 or fax 409/892-1978, e-mail bjunge@templeinland.com. TRD-9814341.

Deep East Texas Local Workforce Development Board met at 300 East Shepherd Avenue, Room 202, Lufkin, September 22, 1998, at 2:30 p.m. Information may be obtained from Billy Junge, P.O. Drawer N, Diboll, Texas 75941, 409/829-1657 or fax 409/892-1978, e-mail bjunge@templeinland.com. TRD-9814340.

Education Service Center, Region XIII, Board of Directors met at 5701 Springdale Road, Room H, Austin, September 15, 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-9814355.

Edwards Central Appraisal District, Board of Directors met at 106 North Austin, County Annex Building, Rocksprings, September 14,

1998, at 10:00 a.m. Information may be obtained from Wiley Rudasill, P.O. Box 858, Rocksprings, Texas 78880, 830/683-4189. TRD-9814351.

Gary County Appraisal District, Board of Directors met at 815 North Sumner, Pampa, September 14, 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-9814360.

Heart of Texas Council of Governments, Workforce Development Board met at 320 Franklin Avenue, Waco, September 17, 1998, at 5:30 p.m. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, 254/756-7822. TRD-9814358.

Heart of Texas Council of Governments, Executive Committee met at 320 Franklin Avenue, Waco, September 14, 1998, at 10:00 a.m. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, 254/756-7822. TRD-9814357.

Lower Neches Valley Authority, Board of Directors met at 7850 Eastex Freeway, September 15, 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-9814392.

Palo Pinto Appraisal District, Appraisal Review Board met at 200 Church Avenue, Palo Pinto, September 16, 1998, at 1:30 p.m. Information may be obtained from Carol Homes or Donna Rhoades, P.O. Box 250, Palo Pinto, Texas 76484, 940/659-1239. TRD-9814393.

San Antonio-Bexar County Metropolitan Planning Organization, Pedestrian Mobility Task Force met at "B" Room —Municipal Plaza Building, 114 Commerce Street, San Antonio, September 16, 1998, at 3:30 p.m. Information may be obtained from Jeanne Geiger, 603 Navarro, Suite 904, San Antonio, Texas 78205, 210/227-8651. TRD-9814394.

Texas Association of Regional Councils, Annual Business Meeting met in an emergency revised agenda at the Radisson Hotel, 500 Padre Boulevard, South Padre Island, September 11, 1998, at 10:30 a.m. Reason for the emergency: A tropical strong in the Gulf Coast has made it necessary to reschedule this meeting. Information may be obtained from Shelia Jennings or Jim Ray, 1305 San Antonio Street, Austin, Texas 78701, 512/478-4715 or fax 512/478-1049. TRD-9814398.

Wood County Appraisal District, Board of Directors met at 210 Clark Street, (P.O. Box 518), Quitman, September 17, 1998, at 1:30 p.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, 903/763-4891. TRD-9814391.

Meetings filed September 11, 1998

Burnet Central Appraisal District, Board of Directors met in a revised agenda at 110 Avenue H. Suite 106, Marble Falls, September 17, 1998, at Noon. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet, Texas 78611, 512/756-8291. TRD-9814446.

Concho Valley Workforce Development Board met at 1621 University, San Angelo, September 17, 1998, at 2:00 p.m. Information may be obtained from Mary Bessent, P.O. Box 1299, Robert Lee, Texas 76849, 915/453-2632 or fax 915/453-2277. TRD-9814423.

Coryell County Appraisal District, Board of Directors met at 107 North 7th Street, Gatesville, September 17, 1998, at 5:00 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, 254/865-6593. TRD-9814412.

Coryell County Appraisal District, Board of Directors met at 107 North 7th Street, Gatesville, September 17, 1998, at 6:00 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, 254/865-6593. TRD-9814413.

Dallas Area Rapid Transit, Legislative AdHoc Committee Meeting met in Conference room C, First Floor, 1401 Pacific Avenue, Dallas, September 15, 1998, at 11:30 a.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, 214/749-3256. TRD-9814410.

East Texas Council of Governments, Executive Committee of the Workforce Development Board met at 3119 Estes Parkway, Longview, September 17, 1998, at 9:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9814436.

East Texas Council of Governments, Workforce Development Board met at 3119 Estes Parkway, Longview, September 17, 1998, at 10:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9814414.

Ellis County Appraisal District, Appraisal Review Board met at 400 Ferris Avenue, Waxahachie, September 15, 1998, at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75168, 972/937-3552. TRD-9814401.

Falls County Appraisal District, Appraisal Review Board met at the Intersection of Highway 6 and 7, Falls County Courthouse, Marlin, September 22, 1998, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661-0430. TRD-9814420.

Harris County Appraisal, Appraisal Review Board met at 2800 North Loop West, Houston, September 18, 1998, at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, 713/957-5222. TRD-9814407.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, September 15, 1998, at 9:00 a.m. Information may be obtained from Pete T. Islas, 21001 North IH35, Kyle, Texas 78640, 512/268-2522. TRD-9814403.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, September 17, 1998, at 9:00 a.m. Information may be obtained from Pete T. Islas, 21001 North IH35, Kyle, Texas 78640, 512/268-2522. TRD-9814404.

Henderson County Appraisal District, Appraisal Review Board met at 1751 Enterprise Street, Athens, September 17, 1998, 9:00 a.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675-9296. TRD-9814411.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, September 14, 1998, 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336-1090, 806/894-9654 or fax 806//894-9654. TRD-9814435.

Hood County Appraisal District, Board of Directors met at 1902 West Pearl Street, District Office, Granbury, September 16, 1998, at 7:30 p.m. Information may be obtained from Jeffrey D. Law, P.O. Box 819, Granbury, Texas 76048, 817/573-2471. TRD-9814405.

Jack County Appraisal District met in a revised agenda at 210 North Church Street, Jacksboro, September 15, 1998, at 7:05 p.m. Information may be obtained from Gary L. Zeitler or Tammie Morgan, P.O. Box 958, Jacksboro, Texas 76458, 940/567-6301. TRD-9814418.

Johnson County Rural Supply Corporation, Regular Board Meeting met at the Corporation Office, 2849 Highway 171 South, Cleburne, September 11, 1998, at 6:00 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, 817/645-6646. TRD-9814421.

Lower Colorado River Authority, Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, September 15, 1998, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, 512/473-3371. TRD-9814422.

Lower Neches Valley Authority, Board of Directors met in a revised agenda at 7850 Eastex Freeway, Beaumont, September 15, 1998, at 10:00 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77708, 409/892-4011. TRD-9814415.

North Texas Tollway Authority, Board of Directors met at DFW Airport Marriott Hotel, 8440 Freeport Parkway, Irving, September 16, 1998, at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, 214/522-6200. TRD-9814402.

Palo Pinto Appraisal District, Board of Directors met at 200 Church Avenue, Palo Pinto, September 17, 1998, at 3:00 p.m. Information may be obtained from Carol Holmes or Donna Rhoades, P.O. Box 250, Palo Pinto, Texas 76484, 949/659-1239. TRD-9814409.

Panhandle Ground Water Conservation District No. 3, Board of Directors Public Meeting met at the District Office, 201 West Third Street, White Deer, September 16, 1998, at 8:00 p.m. Information may be obtained from C.E. Williams, P.O. Box 637, White Deer, Texas 797097, 806/883-2501. TRD-9814406.

Swisher County Appraisal District, Board of Directors met at 130 North Armstrong, Tulia, September 17, 1998, at 8:00 a.m. Information may be obtained from Rose Lee Powell, 130 North Armstrong, Tulia, Texas 79088, 806/995-4118. TRD-9814432.

Meetings filed September 14, 1998

Ark-Tex Council of Governments, Ark-Tex Private Industry Council, Executive Committee Meeting met at the Mt. Pleasant Chamber of Commerce, Mt. Pleasant, September 16, 1998, at 10:00 a.m. Information may be obtained from Sharon Davis, P.O. Box 5307, Texarkana, Texas 75505, 903/832-8636. TRD-9814525.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Called Meeting met at 1124A Regal Row, Austin, September 17, 1998, at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A, Regal Row, Austin, Texas 78748, 512/282-8441 or fax 512/282-7016. TRD-9814463.

Bexar Appraisal District, Appraisal Review Board met at 535 South Main Street, San Antonio, September 18, 1998, at 9:00 a.m. Information may be obtained from Ann Elizonda, P.O. Box 830248, San Antonio, Texas 78283-0248, 210/224-8511. TRD-9814462.

Deep East Texas Council of Governments, Board of Directors and Grants Application Review Committee Meeting met at 201 North Magnolia Street, Woodville Inn, Woodville, September 24, 1998, at 11:00 a.m. Information may be obtained from Walter G. Diggles, Sr., 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704. TRD-9814497.

Denton Central Appraisal District, Board of Directors met at 3911 Morse Street, Denton, September 24, 1998, at 4:00 p.m. Information may be obtained from Connie Bradshaw, P.O. Box 2810, Denton, Texas 76202-2816, 940/566-0904. TRD-9814478.

East Texas Behavioral Healthcare Network, Regional Oversight Committee met in a revised agenda at Victorian Condo Hotel and Conference Center, 6300 Seawall Boulevard, Galveston, September 18, 1998, at 9:00 a.m. Information may be obtained from Joe McCully, 4101 South Medford, Drive, Lufkin, Texas 75901-5699, 409/633-5629. TRD-9814526.

Education Service Center, Region VIII, Board of Director's Meeting met at 106 East Burton Road, Alps Restaurant, Mt. Pleasant, September 24, 1998, at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Pleasant, Texas 75456-1894. TRD-9814534.

Evergreen Underground Water Conservation District, Board of Directors met at 1306 Brown, Jourdanton, September 18, 1998, at 10:00 a.m. Information may be obtained from Evergreen UWCD, P.O. Box 155, Jourdanton, Texas 78026, 830/769-3740. TRD-9814511.

Hockley County Appraisal District, Appraisal Review Board met at 1103 Houston Street, Levelland, September 18, 1998, at 7:00 a.m. Information may be obtained from Nick William, P.O. Box 1090, Levelland, Texas 79336-1090, 806/894-9654. TRD-9814499.

Johnson County Rural Water Supply Corporation, Regular Board Meeting met in an emergency revised agenda at the Corporation Office, 2849 Highway 171 South, Cleburne, September 15, 1998, at 6:00 p.m. Reason for emergency: Change meeting date as originally reported. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, 817/645-6646. TRD-9814502.

Kendall Appraisal District, Board of Directors met at 121 South Main Street, Boerne, September 23, 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-9814501.

Lake Livingston Water Supply and Sewer Service Corporation, Special Board of Directors Meeting met at 622 South Washington, Livingston, September 17, 1998, at 10:00 a.m. Information may be obtained from M.D. Simmons, P.O. Box 1149, Livingston, Texas 77351, 409/327-3107 of fax 409/327-8959. TRD-9814465.

Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization met at TxDOT District Office, 600 West Expressway US 83, Pharr, September 24, 1998, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas 956/682-3481. TRD-9814479.

TML Group Benefits Risk Pool, Underwriting and Bid Review Committee met at 4150 North MacArthur Boulevard, Four Seasons Resort and Club, Irving, September 17, 1998, at 2:00 p.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719-6521. TRD-9814522.

TML Group Benefits Risk Pool, Financial and Investment Committee met at 4150 North MacArthur Boulevard, Four Seasons Resort and Club, September 17, 1998, at 12:30 p.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719-6521. TRD-9814520.

TML Group Benefits Risk Pool, Financial and Investment Committee met at 4150 North MacArthur Boulevard, Four Seasons Resort and Club, September 18, 1998, at 9:15 a.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719-6521. TRD-9814521.

Upper Rio Grande Workforce Development Board met at 5919 Brook Hollow, El Paso, September 17, 1998, at 2:00 p.m. Information may be obtained from Norman R. Haley 5919 Brook Hollow, El Paso, Texas 79925, 915/772-5627, Ext. 406. TRD-9814460.

Upper Rio Grande Workforce Development Board in a revised agenda met at 5919 Brook Hollow, El Paso, September 17, 1998, at 2:00 p.m. Information may be obtained from Norman R. Haley 5919 Brook Hollow, El Paso, Texas 79925, 915/772-5627, Ext. 406. TRD-9814476.

Meetings filed September 15, 1998

Central Texas Water Supply Corporation, Litigation Committee met at 18 South Main 6th Floor FNB Bldg, Temple, September 17, 1998, at 10:00 a.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9814558.

East Texas Council of Governments, Board of Directors met at 525 Elm Street, Pittsburg, September 22, 1998, at 7:15 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9814546.

Gulf Bend Center, Board of Trustees met at 1502 East Airline, Victoria, September 22, 1998, at Noon. Information may be obtained from Angles Moeller, 1502 East Airline, Suite 25, Victoria, Texas 77901, 512/582-2309. TRD-9814588.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board Procurement Committee will meet at 3555 Timmons Lane, Conference, Room A, Second Floor, Houston, September 30, 1998, at 9:00 a.m. Information may be obtained from Carl Kimnick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9814630.

Lower Rio Grande Valley Development Council, Region M Rio Grande Regional Water Planning Group, met at the Laredo National Bank, Plaza Tower 9th Floor, 600 San Bernard Avenue, Laredo, September 23, 1998, at Noon. Information may be obtained from Kenneth N. Jones, 311 North 15th Street, McAllen, Texas 78501-4705, 956/682-3481 or fax 956/631-4670. TRD-9814565.

Martin County Appraisal District, Board Meeting will meet at Rita's Restaurant, 612 West Front, Stanton, September 28, 1998, Noon. Information may be obtained from Doris Holland, P.O. Box 1349, Stanton, Texas 79782, 915/756-2823 or fax 915/756-2825. TRD-9814628.

Nolan County Central Appraisal District, Board of Directors, Called Meeting met at Betty's Little Biscuit, Oak Street, Sweetwater, September 18, 1998, at 7:30 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, 915/235-8421. TRD-9814564.

Region D Regional Water Planning Group, North East Texas Regional water Planning Group-Sulphur River Task Group met at 5501 South Highway 69, Greenville, September 22, 1998, at 2:00 p.m. Information may be obtained from Walt Sear, P.O. Box 955, Hughes Springs, Texas 75656, 903/639-7538. TRD-9814624.

Surplus Lines Stamping Office of Texas, Board of Directors met at Hughes and Luce, L.L.P. 111 Congress Avenue, Suite 900, Austin, September 22, 1998, at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, 512/346-3274. TRD-9814615.

Texas Rural Communities, Inc., Board of Director Meeting met at 12401 Hymeadow Drive, Building One, Suite 1B, Austin, September 18, 1998, at 2:30 p.m. Information may be obtained from Leland Beatty, 12401 Hymeadow Drive, Building One, Suite 1B, Austin, Texas 78750, 512/219-0468. TRD-9814601.

Meeting filed September 16, 1998

Bexar Appraisal District, Board of Directors met at 535 South Main Street, San Antonio, September 21, 1998, at 5:00 p.m. Information may be obtained from Ann Elizondo, P.O. Box 830248, San Antonio, Texas 78283-0248, 210/224-8511, Ext. 263. TRD-9814633.

Brazos Valley Workforce Development Board, Executive Committee met at 1905 South Texas Avenue, Bryan, September 17, 1998, at 2:00 p.m. Information may be obtained from Mollie Moore, 1903 Texas Avenue South, Bryan, Texas 77805-6030, 409/821-0202 or fax 409/779-9297. TRD-9814636.

Brazos Valley Workforce Development Board met at 1905 South Texas Avenue, Bryan, September 17, 1998, at 2:30 p.m. Information may be obtained from Mollie Moore, 1903 Texas Avenue South, Bryan, Texas 77805-6030, 409/821-0202 or fax 409/779-9297. TRD-9814635.

Cash Water Supply Corporation, Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, September 21, 1998, at 7:00 p.m. Information may be obtained from Clay Hodges, P.O. Box 8129, Greenville, Texas 75404-8129, 903/883-2695. TRD-9814655.

Grayson Appraisal District, Appraisal Review Board will meet at 205 North Travis, Sherman, September 29, 1998, at 8:00 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, 903/893-9673. TRD-9814670.

Kleberg-Kenedy Soil and Water Conservation District #356, Board of Directors Meeting met at 1017 South 14th Street, Kingsville,

September 21, 1998, at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 920 East Caesar, Suite 4, Kingsville, Texas 78363, 512/592-0309. TRD-9814648.

Lee County Appraisal District, Appraisal Review Board met at 218 East Richmond Street, Giddings, September 23, 1998, at 9:00 a.m. Information may be obtained from Lynette Jatzlau, 218 East Richmond Street, Giddings, Texas 78942, 409/542-9618. TRD-9814640.

North Texas Local Workforce Development Board met at 4309 Jacksboro Highway, Suite 200, Wichita Falls, September 24, 1998, at Noon. Information may be obtained from Mona W. Statner, North Texas Local Workforce Development Board, Suite 106, Wichita Falls, Texas 76302, 940/322-5281. TRD-9814647.

Texas Panhandle Mental Health Authority, Board of Trustees met at 1500 South Taylor Street, Amarillo, September 24, 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-9814664.

Wichita Falls MPO, Public Hearing met at Wichita Falls, ISD, Administration Building, 1104 Broad Street, Wichita Falls, September 22, 1998, at 5:30 p.m. Information may be obtained from Richard Luedke, P.O. Box 1431, Wichita Falls, Texas 76307, 940/761-7447. TRD-9814672.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Fuel Quality Penalty Matrix

The Texas Department of Agriculture (the department) is publishing the following administrative penalty matrix to inform the regulated public. This matrix has been developed for the enforcement of Article 8614, Vernon's Texas Civil Statutes (1997) (the Article) and the rules adopted pursuant to the Article. The department's authority for enforcement of Article 8614 is found in §7a of the Article, whereby the department may assess and collect administrative penalties against violators of the Article or rules adopted under the Article in an amount not to exceed \$500 per violation. Each day that a violation occurs or continues to occur may be considered a separate violation for purposes of administrative penalty assessment. This administrative penalty matrix is designed to ensure that the department's administrative enforcement actions are fair, uniform, consistent and appropriate. The penalties provided in the matrix are intended to deter future violations of the Article and to penalize the violator. For each type of offense there is a penalty range. The low end of each range is the presumptive base penalty for each violation, and represents an appropriate penalty for violations which are considered "minor" with respect to the criteria set forth in the Article. This matrix is effective immediately upon its publication in the *Texas Register*.

The violations covered by the matrix are listed in Tables I-IV based upon the specific type of violation. Table I addresses automotive

fuel rating (AFR) posting violations and provides for an increase in penalty amount as the variance increases between the sample test result and the posted AFR. The variance is any amount of deviation between the posted AFR and the actual AFR test results that exceeds the allowable tolerance factor of 0.70. Each AFR posting found to misrepresent the actual AFR constitutes a separate violation.

Table II addresses record keeping violations.

Table III addresses misrepresentations of the AFR made to the dealer by the distributor or supplier when the distributor or supplier sells the fuel to the dealer. The matrix provides for the penalty to be increased based upon the number of gallons involved in the transaction.

Table IV provides a penalty to be assessed when the ethanol and/or methanol content is not posted as required by the Article for fuels found to contain ethanol and methanol.

The proposed penalty will be enhanced by 25% for a prior offense for a similar violation, with the penalty not to exceed \$500 per violation. An offense refers to violations in which an order has been issued and the case has been closed. The date of the violation is the inspection date. A prior violation may be used for purposes of enhancement if the date of the prior violation occurred within the previous three years.

Additional reductions in the penalty may be allowed for extenuating circumstances as justice requires.

This matrix becomes effective October 1, 1998.

176 - FUEL TESTING PENALTY MATRIX - Figure

TABLE I

	0.05 - 0.199	0.20 - 0.299	0.30 - 0.399	0.40 or more
FUEL TESTED DOES NOT EQUAL AUTOMOTIVE FUEL RATING (AFR) POSTED† BY RETAILER OR DEALER	\$25 - 100	\$75 - 150	\$100-175	\$150 - 225

† Penalties are assessed for each misrepresented automotive fuel rating (AFR) posting based on the results of the fuel sample being inconsistent with the posted AFR.

TABLE II

FAILURE TO MAINTAIN RECORDS	\$50 - 100
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TABLE III

	0 - 25,000 GALLONS	25,001 OR MORE GALLONS
DISTRIBUTION OF FUEL THAT IS BELOW AFR AS STATED ON DELIVERY DOCUMENTS	\$150—300	\$301—500

TABLE IV

FAILURE TO POST ETHANOL AND/OR METHANOL CONTENT*	\$50 - 150
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* Penalties are assessed for each required ethanol and/or methanol posting based on the results of the fuel sample.

TRD-9814312
 Dolores Alvarado Hibbs
 Deputy General Counsel
 Texas Department of Agriculture

Filed: September 9, 1998

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Notice of Intent and Request for Comments

The Texas Department of Agriculture (the department) is accepting comments regarding the awarding of the contract for administration of a biologically intensive integrated pest management grants program to the Texas Pest Management Association (TPMA) for the period from January 1, 1999 through December 31, 1999. The maximum amount of the contract to administer the program is \$30,000. The department intends to award the contract for administration of this program to TPMA due to the specialized expertise and experience of TPMA. TPMA has successfully managed this grant program for the previous five years and has developed expertise in dealing with the various aspects of this program. TPMA was established as a statewide, multi-commodity, non-profit, producer-directed organization in Texas whose primary mission is Integrated Pest Management (IPM) and continues to be the only association dedicated to the advancement of IPM in Texas. Therefore, TPMA is in a unique position to manage this program. TPMA will solicit grant proposals, participate in the review of the proposals, notify grantees of grant awards, keep accounts, disburse funds, and acquire and maintain prescribed documents.

A draft of the contract to be used between the administering organization and the department and additional information about the contract may be obtained by contacting Sheri Land, Coordinator for Funding, Intergovernmental Affairs Division, at (512) 463-8536. Any comments or alternative proposals should be submitted no later than 5:00 p.m., October 8, 1998, to Sheri Land, Coordinator for Funding, Intergovernmental Affairs Division, P.O. Box 12847, Austin, Texas 78711.

TRD-9814683

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: September 16, 1998



Request for Proposals

Pursuant to the Texas Agriculture Code, §12.002, and §12.007 and the General Appropriations Act, Acts 1995, 74th Legislature, Regular Session, Chapter 1063, at 5821- 5826, the Texas Department of Agriculture (the department) is authorized to contract with producer organizations to provide statewide integrated pest management (IPM) programs.

The department intends to renew a cooperative agreement with the Texas Pest Management Association (the association) to administer the department's IPM grant program. The association, through the department, hereby requests proposals for projects for the period from January 1, 1999 through December 31, 1999, that use and expand the use of integrated pest management in agriculture. A total of \$170,000 will be awarded, with no more than \$15,000 being awarded per grantee.

The proposed projects should be for research that relates to IPM development, the demonstration of IPM principles and technology, the establishment of educational programs to expand the use of biologically intensive IPM, and the implementation of and carrying out of biologically intensive IPM programs for farmer/rancher groups. Proposals must be submitted by non-profit producer, educational, or research organizations involved in integrated pest management programs. Joint efforts between public and private entities are encouraged. Proposals involving research other than IPM implementation research and proposals for chemical pesticides efficacy testing are not eligible for grant funds.

Preference will be given to: proposals that emphasize the final development of new, previously untested technologies; proposals that compare different IPM strategies; proposals that implement new IPM tactics, strategies or components of IPM systems; proposals that seek implementation of IPM practices in Texas counties where such practices have not been used; proposals which demonstrate economic benefits for Texas; proposals which implement IPM in non-traditional commodities.

Each proposal must include the following: a project summary not to exceed one page, rationale/justification, the name, address, and phone number of the principal investigator, project objectives, project work plan, description of the anticipated impact on agriculture, and a detailed project budget. The entire proposal may not exceed six pages, including attachments. Please include any matching funding that the project has or has applied for this project. Please send one original proposal with ten additional copies. All approved projects must be completed by December 31, 1999. Upon completion of the project, a project report will be due within four weeks. The quality of this report may be used to evaluate further funding requests. All awards will be subject to audit.

Proposals should be submitted to Mike Wallace, Executive Director, Texas Pest Management Association, 8000 Centre Park Drive, Suite 390, Austin, Texas 78754. Mr. Wallace may be contacted by phone at (512) 834-8762 or by fax at (512) 339-6302 for additional information about preparing the proposal. Proposals must be received no later than 5:00 p.m., October 30, 1998.

All proposals will be evaluated by a proposal review committee made up of persons knowledgeable in IPM programs and practices, both scientists and non-scientists. Proposals will be evaluated based on the requirements set forth above. The announcement of the grant awards will be made by December 1, 1998.

TRD-9814682

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: September 16, 1998



Office of the Attorney General

Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Section 382.096 of the Texas Health & Safety code provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court: City of Houston and State of Texas v. Reclaim Environmental, Inc., Cause No. 97-08539, in the 113th District Court, Harris County, Texas.

Nature of Defendant's Operations: Reclaim Environmental, Inc., operates a waste liquids processing facility inside the corporate limits of Houston located at 7026 Lawndale, Houston, Texas 77023.

Proposed Agreed Judgment: The Agreed Judgment calls for Reclaim to enclose its product loading and unloading area within a building

and to vent air from the building to the outside through carbon filters. All storage tank vents must also contain carbon filters. A procedure to monitor and ensure compliance with the carbon filter program is included. The Agreed Final Judgment also provides for the payment of \$26,500 in civil penalties each to the City of Houston and the State, and to pay attorneys fees of \$6,000 to the City of Houston and \$3,500 to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9814498
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: September 14, 1998



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of September 9, 1998, through September 15, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Enron Ventures Corporation; Location: The project is located in the Barbours Cut Turning Basin, in Harris County, Texas; Project No. 98-0430-F1; Description of Proposed Action: The applicant is requesting to amend their existing permit to authorize the construction of a 40 by 90-foot loading platform, 20 by 100-foot walkway, four 15 by 15-foot breasting dolphins, two 15 by 15-foot mooring dolphins, and the dredging of an area approximately 1,200 feet long by 125 feet wide to a depth of 40 feet below mean low tide. Approximately 155,000 cubic yards of material is proposed to be hydraulically dredged and placed in the Spilmans Island Dredged

Material Placement Area. In addition, the applicant is requesting authorization to perform maintenance dredging for a period of 10 years. The project is requested to allow the applicant to handle larger, deeper draft vessels at their existing facility; Type of Application: U.S.C.O.E. permit application #16426(04) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Larry Jones; Location: The project is located on Crystal Cove, off of Taylor Lake, at 2815 Carmel Woods, Seabrook, Harris County, Texas; Project No. 98-0431-F1; Description of Proposed Action: The applicant proposes to construct a 1,120-square-foot pier/boathouse for recreational purposes; Type of Application: U.S.C.O.E. permit application #21363 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Cockrell Oil Corporation; Location: The project is located in the Gulf of Mexico, Kleberg County, S.T. 982S, Mustang Island Area. Latitude 27 degrees 19' 47.9436", Longitude 97 degrees 17' 52.2409" approximately 32 miles northeast of Riviera, Texas; Project No. 98-0433-F1; Description of Proposed Action: The applicant proposes to place a jack-up rig on location for the purpose of oil and gas exploration and production. If the proposed well is successful, install either a four-pile platform or a caisson well protector platform at the proposed surface location; Type of Application: U.S.C.O.E. permit application under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

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-9814625
Garry Mauro
Chairman
Coastal Coordination Council
Filed: September 15, 1998



Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 1998

COMPTROLLER OF PUBLIC ACCOUNTS

LOCAL SALES TAX RATE CHANGES EFFECTIVE OCTOBER 1, 1998

The city of Meadows has changed its legal name as listed below. This name change is effective immediately. There is no change in the local code or the sales tax rate.

<u>City Name</u>	<u>Local Code</u>	<u>Local Rate</u>	<u>Total Rate</u>
Meadows Place (Fort Bend Co.)	2079168	.020000	.082500

The city of Northcrest (2161130) has abolished its local sales and use tax and has merged with the city of Lacy Lakeview effective October 1, 1998. There is a change in the sales tax rate and local sales tax should now be reported as listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Lacy Lakeview (McLennan Co.)	2161096	.015000	.082500

The 1% local sales and use tax will become effective October 1, 1998 in the cities listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
+ Fairview (Wise Co.)	2249127	.015000	.082500
Huxley (Shelby Co.)	2210060	.010000	.072500
Kempner (Lampasas Co.)	2141037	.010000	.077500

+ The city of Fairview (Wise County) has adopted both the 1% local sales and use tax and the 1/2% additional city sales and use tax. Both taxes will become effective October 1, 1998.

COMPTROLLER OF PUBLIC ACCOUNTS
Local Sales Tax Rate Changes Effective October 1, 1998
Page 2

The additional 1/2% sales and use tax for property tax relief will be reduced to 1/4% and an additional 1/4% sales and use tax for improving and promoting economic and industrial development will become effective October 1, 1998 in the city listed below. There will be no change in the local rate or total rate.

<u>City Name</u>	<u>Local Code</u>	<u>Local Rate</u>	<u>Total Rate</u>
Palestine (Anderson Co.)	2001018	.015000	.082500

The additional 1/2% sales and use tax for property tax relief will be repealed and an additional 1/2% sales and use tax for improving and promoting economic and industrial development will become effective October 1, 1998 in the city listed below. There will be no change in the local rate or total rate.

<u>City Name</u>	<u>Local Code</u>	<u>Local Rate</u>	<u>Total Rate</u>
Wharton (Wharton Co.)	2241018	.015000	.082500

The additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4A will be replaced with an additional 1/2% sales and use tax as permitted under Article 5190.6, Section 4B in the city listed below. This tax type change will become effective October 1, 1998. There will be no change in the local rate or total rate.

<u>City Name</u>	<u>Local Code</u>	<u>Local Rate</u>	<u>Total Rate</u>
Kemah (Galveston Co.)	2084027	.020000	.082500

An additional 1/4% city sales and use tax for improving and promoting economic and industrial development will become effective October 1, 1998 in the city listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
* Windcrest (Bexar Co.)	2015094	.015000	.077500

* These cities have a rate increase for economic and industrial development and a rate increase for property tax relief. Both rate increases will become effective October 1, 1998. The new rate and the total rate include both rate increases.

COMPTROLLER OF PUBLIC ACCOUNTS
Local Sales Tax Rate Changes Effective October 1, 1998
 Page 3

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development will become effective October 1, 1998 in the cities listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
* Alamo (Hidalgo Co.)	2108092	.020000	.082500
Bellville (Austin Co.)	2008020	.015000	.082500
Caddo Mills (Hunt Co.)	2116056	.015000	.082500
Coffee City (Henderson Co.)	2107146	.015000	.077500
Dickinson (Galveston Co.)	2084125	.015000	.077500
* Dumas (Moore Co.)	2171012	.020000	.082500
* Electra (Wichita Co.)	2243043	.020000	.082500
Franklin (Robertson Co.)	2198039	.020000	.082500
Gorman (Eastland Co.)	2067037	.015000	.077500
Hawkins (Wood Co.)	2250052	.015000	.082500
Huntington (Angelina Co.)	2003034	.015000	.082500
Joaquin (Shelby Co.)	2210033	.015000	.077500
Kirbyville (Jasper Co.)	2121013	.015000	.077500
Lone Star (Morris Co.)	2172039	.015000	.082500
Lott (Falls Co.)	2073020	.015000	.082500
Mexia (Limestone Co.)	2147013	.020000	.082500
* Palmer (Ellis Co.)	2070069	.020000	.082500
Poth (Wilson Co.)	2247049	.015000	.077500
Round Top (Fayette Co.)	2075064	.015000	.082500
* Shenandoah (Montgomery Co.)	2170095	.020000	.082500
Sonora (Sutton Co.)	2218017	.015000	.077500
Sudan (Lamb Co.)	2140056	.015000	.077500
Trinidad (Henderson Co.)	2107039	.015000	.077500
Tye (Taylor Co.)	2221049	.020000	.082500

* These cities have a rate increase for economic and industrial development and a rate increase for property tax relief. Both rate increases will become effective October 1, 1998. The new rate and the total rate include both rate increases.

COMPTROLLER OF PUBLIC ACCOUNTS
Local Sales Tax Rate Changes Effective October 1, 1998
 Page 4

An additional 3/4% city sales and use tax for improving and promoting economic and industrial development will become effective October 1, 1998 in the city listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
* Whitesboro (Grayson Co.)	2091082	.020000	.082500

An additional 1% city sales and use tax for improving and promoting economic and industrial development will become effective October 1, 1998 in the cities listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Sanger (Denton Co.)	2061079	.020000	.082500
Wortham (Freestone Co.)	2081039	.020000	.082500

An additional 1/4% sales and use tax for property tax relief will become effective October 1, 1998 in the cities listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Dripping Springs (Hays Co.)	2105040	.012500	.080000
* Windcrest (Bexar Co.)	2015094	.015000	.077500
* Whitesboro (Grayson Co.)	2091082	.020000	.082500

* These cities have a rate increase for economic and industrial development and a rate increase for property tax relief. Both rate increases will become effective October 1, 1998. The new rate and the total rate include both rate increases.

COMPTROLLER OF PUBLIC ACCOUNTS
Local Sales Tax Rate Changes Effective October 1, 1998
Page 5

An additional 1/2% sales and use tax for property tax relief will become effective October 1, 1998 in the cities listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
* Alamo (Hidalgo Co.)	2108092	.020000	.082500
Combine (Dallas Co.)	2129079	.015000	.077500
Combine (Kaufman Co.)	2129079	.015000	.077500
Cross Roads (Denton Co.)	2061284	.015000	.077500
* Dumas (Moore Co.)	2171012	.020000	.082500
* Electra (Wichita Co.)	2243043	.020000	.082500
Fairview (Wise Co.)	2249127	.015000	.082500
Hill Country Village (Bexar Co.)	2015085	.020000	.082500
* Palmer (Ellis Co.)	2070069	.020000	.082500
San Juan (Hidalgo Co.)	2108109	.020000	.082500
* Shenandoah (Montgomery Co.)	2170095	.020000	.082500
Toyah (Reeves Co.)	2195023	.015000	.082500

* These cities have a rate increase for economic and industrial development and a rate increase for property tax relief. Both rate increases will become effective October 1, 1998. The new rate and the total rate include both rate increases.

COMPTROLLER OF PUBLIC ACCOUNTS
Local Sales Tax Rate Changes Effective October 1, 1998
Page 6

A 1/2% local sales and use tax will become effective October 1, 1998 in the special purpose districts listed below.

<u>SPD Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Aransas Pass Development District	5205502	.005000	See Note 1
Salado Public Library District	5014503	.005000	See Note 2
Westbank Community Library District	5227506	.005000	See Note 3

NOTE 1: The boundaries of the Aransas Pass Municipal Development District are the same boundaries as the city of Aransas Pass, **excluding** any area within Aransas County. Call the City Inspector's Office with the city of Aransas Pass at 512/758-5415 for additional boundary information.

NOTE 2: The Salado Public Library District is located in the southern portion of Bell County, but does not include all of Bell County. The boundaries of the special purpose district are the same boundaries as the Salado Independent School District. The unincorporated area known as Salado is located within the Salado Public Library District. The unincorporated areas of Bell County in ZIP codes 76513 and 76571 are partially within the Salado Public Library District. Call the district representative at 254/947-9191 for additional boundary information.

NOTE 3: The Westbank Community Library District is located in the western portion of Travis County. The boundaries of the special purpose district are the same boundaries as the Eanes Independent School District, **excluding** any area within the city of Austin. The cities of Rollingwood and West Lake Hills are totally within the Westbank Community Library District. The unincorporated areas of Travis County in ZIP codes 78733 and 78746 are partially within the special purpose district. Call the Administrative Assistant at 512/327-3045 for additional boundary information.

Filed: September 15, 1998

TRD-9814559
Martin Cherry
Chief, General Law
Comptroller of Public Accounts

◆ ◆ ◆
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 09/21/98 - 09/27/98 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 09/21/98 - 09/27/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9814653

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 16, 1998



Texas Credit Union Department

Application 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 Mid-County Teachers Credit Union (Port Neches) seeking approval to merge with City of Orange Employees Federal Credit Union (Orange) with Mid-County Teachers Credit Union 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-9814642

Lynette Pool-Harris

Deputy Commissioner

Texas Credit Union Department

Filed: September 16, 1998



Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application for a name change was received for Doches District Telco Credit Union, Nacogdoches, Texas. The proposed new name is Doches Community Credit Union.

An application for a name change was received for Montgomery Ward Texas Credit Union, Arlington, Texas. The proposed new name is Montgomery Ward Credit Union.

An application for a name change was received for Wichita Falls Postal Credit Union, Wichita Falls, Texas. The proposed new name is PosTel Family 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-9814644

Lynette Pool-Harris

Deputy Commissioner

Texas Credit Union Department

Filed: September 16, 1998



Applications to Expand Field Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from First Educators Credit Union, Houston, Texas to expand its field of membership. The proposal would permit students attending institutions of higher education in Harris and Montgomery Counties (the terminology "institution of higher education" includes public or private technical institute, trade school, junior college, community college, senior college or university, law school, or any other post secondary or postgraduate institution, school, or facility), excluding students of UT Healthcare System and Baylor College of Medicine at the time membership is sought, to be eligible for membership in the credit union.

An application was received from First Educators Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of all offices of Goodwill Industries of Houston located in Harris County to be eligible for membership in the credit union.

An application was received from United Heritage Credit Union, Austin, Texas to expand its field of membership. The proposal would permit the members of Austin Diagnostic Clinic's Classics Club to be eligible for membership in the credit union.

An application was received from Koch-Glitsch Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit the employees of Koch-Glitsch, Inc. who work in or are paid from Wichita, Kansas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9814643

Lynette Pool-Harris

Deputy Commissioner

Texas Credit Union Department

Filed: September 16, 1998



Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Texas Credit Union Department provides notice of the final action taken on the following application(s):

Applications to Expand Field of Membership

EPNE Credit Union, El Paso, Texas - See *Texas Register* issue dated June 26, 1998.

Capitol Credit Union, Austin, Texas - See *Texas Register* issue dated June 26, 1998.

Scott & White Employees Credit Union, Temple, Texas - See *Texas Register* issue dated June 26, 1998.

Application to Amend Articles of Incorporation

Procter & Gamble/Folger Coffee Texas Employees Credit Union, Dallas, Texas - See *Texas Register* issue dated July 31, 1998.

Application for a Merger or Consolidation

West Texas Credit Union and TSWAG Federal Credit Union - See *Texas Register* issue dated June 5, 1998.

TRD-9814641

Lynette Pool-Harris

Deputy Commissioner

Texas Credit Union Department

Filed: September 16, 1998



Texas Education Agency

Correction of Error

The Texas Education Agency adopted an amendment to 19 TAC §109.41. The rule appeared in the July 31, 1998, issue of the *Texas Register*, (23 TexReg 7782).

On page 7782, the proposal publication date was published as "May 29, 1998" and should read "April 17, 1998."



General Services Commission

Notice of Contract Award

The State of Texas (the "State") through the General Services Commission (the "GSC") pursuant to its Request for Proposal ("RFP") as issued in the December 26, 1997, issue of the *Texas Register* (22 Tex Reg 12870) for conducting a comprehensive needs analysis of the Automated and Non-Automated processes of the GSC, awarded the contract to Spectrum Consulting Group, Inc. on or about May 8, 1998.

The RFP was the result of the responses to GSC's Phase 1, Requests for Information ("RFI") #98-1A, that was published in the October 3, 1997, issue of the *Texas Register* (22 Tex Reg 10033). The RFP for the services requested constituted Phase II of this process. Spectrum Consulting Group Inc. has conducted a comprehensive needs analysis to improve the quality of the information required by the GSC Commissioners and GSC Executive Management in the decision making process and to increase communications and information sharing among GSC divisions.

Spectrum Consulting Group, a division of Maximus, located at 2800 S. IH 35, Suite 160, Austin, Texas 78704 undertook six (6) tasks to complete the comprehensive needs analysis: (1) Project Plan -

Spectrum delivers a final written work plan and project timeline for review and approval on or about May 26, 1998. (2) Oral Presentation of Findings - Spectrum makes oral presentations to GSC Commissioners, GSC Executive Management, staff and other interested parties on or about June 30, 1998. (3) Report of Findings - Spectrum provides copies of the written report to the GSC on or about July 7, 1998. (4) First Draft of Proposed Business Processes Report Spectrum provides copies of the written report to the GSC on or about August 10, 1998. (5) Oral Presentation of Proposed Business Processes Spectrum makes oral presentations to GSC Commissioners, GSC Executive Management, staff and other interested parties on or about August 25, 1998. (6) Proposed Business Processes Final Report - Spectrum provides copies of the written report to the GSC on or about September 4, 1998.

The contract between GSC and Spectrum Consulting Group is for the total value of \$127,500.00. The contract began May 8, 1998, and is scheduled to conclude September 4, 1998. The results of the needs analysis will serve as an integral part of GSC's report to the Texas State Auditor's Office. For further information, please contact Donna Cordes, Director of Information Systems, GSC at (512) 475-2486.

TRD-9814430

Judy Ponder

General Counsel

General Services Commission

Filed: September 11, 1998



Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community adopted repeals to 10 TAC §§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, and 80.201-80.208 and new 10 TAC §§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. The rules appeared in the September 4, 1998, issue of the *Texas Register*, (23 TexReg 9020).

Page 9020-Standards and Requirements (TRD-9813298)

Error: The publication states 10 TAC §§80.51-80.63, 80.64, 80.65, and 80.67 become effective on November 3, 1998.

Correction: Rules 10 TAC §§80.51-80.63 become effective 60 days after publication (Effective Date: November 3, 1998). Rules 10 TAC §§80.64, 80.65, and 80.67 become effective 20 days after filing (Effective Date: September 9, 1998).

Page 9020-General Requirements (TRD-9813301)

Error: The publication states 10 TAC §§80.118, 80.121, 80.123-80.126, 80.129-80.132, and 80.135 become effective on September 9, 1998.

Correction: Rules 10 TAC §§80.118, 80.123-80.126, 80.129-80.132, and 80.135 become effective 20 days after filing (Effective Date: September 9, 1998). Rule 10 TAC §80.121 becomes effective 60 days after publication (Effective Date: November 3, 1998).

Page 9027-Subchapter D, Standards and Requirements (TRD-9813307)

Error: The publication states 10 TAC §§80.50-80.56, 80.62, 80.63, 80.64, and 80.66 become effective on November 3, 1998.

Correction: Rules 10 TAC §§80.50–80.56, 80.62, and 80.63 become effective 60 days after publication (Effective Date: November 3, 1998). Rules 10 TAC §80.64 and §80.66 become effective 20 days after filing (Effective Date: September 9, 1998).

Page 9028–Subchapter E, General Requirements (TRD-9813310)

Error: The publication states 10 TAC §§80.119, 80.120–80.123, 80.125–80.128, 80.130–80.132, and 80.135 become effective on September 9, 1998.

Correction: Rules 10 TAC §§80.120–80.123, 80.125–80.128, 80.130–80.132, and 80.135 become effective 20 days after filing (Effective Date: September 9, 1998). Rules 10 TAC §80.119 becomes effective 60 days after publication (Effective Date: November 3, 1998).



Texas Department of Human Services

Request for Consulting Services

In accordance with the provisions of Chapter 2254, Subchapter B, of the Texas Government Code, Article 6252-11c, the Texas Department of Human Services (DHS) invites offers for consulting services for a research analysis of the cost-effectiveness of DHS long-term care services.

Description of Services: DHS is interested in obtaining information about its long-term care programs, and about similar programs in other states, that will assist in identifying the need for program refinements and aid the agency in assessing initiatives that have been proposed to improve these services. Any public or private organization may submit a proposal.

Terms and Amount: The approximate timeframes for this contract are from October 19, 1998, through March 5, 1999. The cost limit for the work is \$500,000.

Selection and Evaluation: Each proposal received will be reviewed to determine (a) if it was received on or before the deadline date and time and (b) if the proposed budget is no greater than the budget limit. All proposals received on or before this date and time which do not exceed the budget limit will be submitted to an agency evaluation committee. The committee will evaluate and score the proposals based on predetermined criteria. DHS reserves the right to accept or reject all or any part of a proposal and to award one or more contracts to best serve the interests of DHS.

Reports Due: The contractor will submit a final research report to DHS no later than March 5, 1999.

Closing Date: Proposals must be received by DHS at the address shown no later than 5:00 P.M. on October 9, 1998. Late proposals will not be evaluated. Revisions to proposals previously submitted will be accepted provided the revisions are received no later than the proposal due date at the proposal delivery address. DHS cannot accept proposals delivered by e-mail or by FAX.

Contact Person: For a complete RFP packet, please contact Sandra R. Simon, Ph.D., at (512) 438-4729. The RFP may also be accessed and downloaded through the Electronic State Business Daily website at <http://204.64.175.94/1380/bid/show.cfm>. Find Department of Human Services in the agency listing, then enter agency requisition number: PAE98081101.

Dr. Simon's address is: Sandra R. Simon, Ph.D.; Program Analysis and Evaluation W-340; Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714- 9030.

TRD-9814616

Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: September 15, 1998



Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of USLIFE CREDIT LIFE INSURANCE COMPANY to AMERICAN GENERAL ASSURANCE COMPANY, a foreign life company. The home office is located in Schaumburg, IL.

Application for incorporation in Texas for MAGELLAN BEHAVIORAL HEALTH, INC., a domestic HMO. The home office is located in Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9814629
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 15, 1998



The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of CAPITOL AMERICAN LIFE INSURANCE COMPANY to CONSECO HEALTH INSURANCE COMPANY, a foreign life company. The home office is located in Phoenix, Arizona.

Application for incorporation in Texas for UNDERWRITERS LLOYDS OF TEXAS, a domestic Lloyds company. The home office is located in Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9814434
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 11, 1998



Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by the Continental Insurance Company proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing rates for private passenger automobile insurance ranging from -30% to -90% below the benchmark by coverage for their Classic Automobile Program.

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 Art. 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-9814433
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 11, 1998



Notices of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2382 on October 7, 1998, at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider two appointments to the Building Code Advisory Committee (Committee). One of the appointments is a replacement for a current public member, and the other appointment is replacement for the county judge or county commissioner appointee.

The Commissioner is considering the appointment of Mr. Joseph E. Minor of Rockport to replace Ms. Patricia Higgins of Port Arthur as a public member, and the appointment of County Commissioner Paul W. Lott of Chambers County to replace former County Judge William McDaniel of Kleberg County.

Article 21.49, §6A(f) of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building specifications in the plan of operation of the Texas Windstorm Insurance Association (TWIA). Article 21.49, §6A(f) also provides for the membership of the Committee, including public members and a county judge or county commissioner appointee from the designated catastrophe area. Pursuant to 28 TAC §5.4002(f), the members of the Committee shall serve on the Committee at the discretion of the Commissioner, and any appointee resigning from the Committee shall be replaced by the Commissioner with another appointee representing the same constituency as the resigning appointee.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointments.

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

TRD-9814550
Bernice Ross

Deputy Chief Clerk
Texas Department of Insurance
Filed: September 15, 1998



The Commissioner of Insurance, at a public hearing under Docket No. 2383 scheduled for November 4, 1998 at 10:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1997, 1998, and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0998-25-I), was filed on September 8, 1998.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1997, 1998, and 1999 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0998-25-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9814556
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 15, 1998



Legislative Budget Board

Schedule for Joint Budget Hearings (for the period of September 28-October 6, 1998) on Appropriations Requests for the 2000-2001 Biennium

Schedule of Joint Budget Hearings (for the period of September 28 through October 6, 1998) on Appropriations Requests for the 2000-2001 Biennium

Texas A&M University - Kingsville Tuesday, September 29, 1998	9:00 AM	Early Childhood Development Center, Room 219 B&C 6300 Ocean Drive	Corpus Christi,
Texas A&M International University Tuesday, September 29, 1998	9:00 AM	Early Childhood Development Center, Room 219 B&C 6300 Ocean Drive	Corpus Christi,
Texas A&M University - Corpus Christi Tuesday, September 29, 1998	9:00 AM	Early Childhood Development Center, Room 219 B&C 6300 Ocean Drive	Corpus Christi,
Texas A&M University-Commerce Thursday, October 01, 1998	9:00 AM	UT-Dallas, Cecil & Ida Green Center 2nd Floor Conference Room 2601 1 N. Floyd Rd.	Richardson, Texas
Texas A&M University-Texasarkana Thursday, October 01, 1998	9:00 AM	UT-Dallas, Cecil & Ida Green Center 2nd Floor Conference Room 2601 1 N. Floyd Rd.	Richardson, Texas
The University of Texas at Dallas Thursday, October 01, 1998	9:00 AM	UT-Dallas, Cecil & Ida Green Center 2nd Floor Conference Room 2601 1 N. Floyd Rd.	Richardson, Texas
The University of Texas at Arlington Thursday, October 01, 1998	9:00 AM	UT-Dallas, Cecil & Ida Green Center 2nd Floor Conference Room 2601 1 N. Floyd Rd.	Richardson, Texas
West Texas A&M University Thursday, October 01, 1998	9:00 AM	UT-Dallas, Cecil & Ida Green Center 2nd Floor Conference Room 2601 1 N. Floyd Rd.	Richardson, Texas
The University of Texas at El Paso Thursday, October 01, 1998	10:00 AM	UT System-Ashbel Smith Hall Bldg., Ash 2 Conference Room 201 West 7th Street	Austin, Texas

9/16/98 8:29:49 AM

Page 1 of 2

Schedule of Joint Budget Hearings (for the period of September 28 through October 6, 1998) on Appropriations Requests for the 2000-2001 Biennium

Texas State Technical College-Waco Tuesday, October 06, 1998	10:00 AM	Bldg. 1, Suite 1.100 7700 Chevy Chase Drive	Austin, Texas
Texas State Technical College-Sweetwater Tuesday, October 06, 1998	10:00 AM	Bldg. 1, Suite 1.100 7700 Chevy Chase Drive	Austin, Texas
Texas State Technical College System Tuesday, October 06, 1998	10:00 AM	Bldg. 1, Suite 1.100 7700 Chevy Chase Drive	Austin, Texas
Texas State Technical College-Harlingen Tuesday, October 06, 1998	10:00 AM	Bldg. 1, Suite 1.100 7700 Chevy Chase Drive	Austin, Texas

TRD-9814665
John Keel
Director
Legislative Budget Board

Filed: September 16, 1998

◆ ◆ ◆
Lower Colorado River Authority
Notice

9/16/98 8:29:50 AM

Page 2 of 2

The Lower Colorado River Authority (LCRA) has filed a report to the Public Utility Commission of Texas (PUC or commission) regarding the acquisition by LCRA of a one-half interest in structures used to support a double circuit 138 kilovolt (kV) transmission line in Travis and Hays counties, Texas, 6.3 miles in length, such structures supporting one Austin Energy (City of Austin) circuit and one LCRA circuit. This matter has been assigned PUC Docket No. 19788. LCRA's circuit on these structures was approved by the commission in PUC Docket No. 10735. LCRA seeks a finding that the acquisition is consistent with the public interest.

Persons with questions about this project should contact Mark Walker of LCRA at (512) 473-3378; Legal Department, 3701 Lake Austin Blvd., Austin, Texas 78703. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas at 1701 N. Congress Ave., Austin, Texas, 78701 or call the Public Utility Commission Public Information Office at (512) 936-7140 or (512) 936-7136 for the text telephone. The deadline for intervention is October 9, 1998, and a letter requesting intervention should be received by the commission by that date.

TRD-9814562
Glen E. Taylor
General Counsel
Lower Colorado River Authority
Filed: September 15, 1998



Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 24, 1998**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these Default Orders should be sent to the attorney designated for each Default Order at the TNRCC's Central Office

at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 24, 1998**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone number; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: James Higgins and John Higgins dba Bulldog Environmental; DOCKET NUMBER: 98-0149-MSW-E; TNRCC ID NUMBER: No TNRCC Permit; LOCATION: Montgomery, Montgomery County, Texas; TYPE OF FACILITY: solid waste processing facility; RULES VIOLATED: 30 TAC §330.4 by storing and processing municipal solid waste without TNRCC authorization; PENALTY: 5,000; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500

(2) COMPANY: Richard Dinscore; DOCKET NUMBER: 97-1037-OSI-E; TNRCC ID NUMBER: 3885; LOCATION: Dripping Springs, Hays County, Texas; TYPE OF FACILITY: on-site sewerage facility; RULES VIOLATED: 30 TAC §285.33(a), §285.50(d), and Texas Health and Safety Code, §366.004 by cutting the sewer line to the evapotranspiration bed, causing a discharge of sewage, thereby not exercising reasonable care, judgement or application of knowledge in the performance of duty of an on-site sewage installer; PENALTY: \$938; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758, (512) 339-2929

TRD-9814651
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: September 16, 1998



Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO)s pursuant to the Texas Water Code, §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **October 24, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of AOs if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to proposed AOs is not required to be published if those changes are made in response to written comments.

A copy of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AOs at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October**

24, 1998. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorney is available to discuss the AOs and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: James Jones dba Jones Mobile Home Park; DOCKET NUMBER: 97-0676-PWS-E; PWS NUMBER: 0920029; LOCATION: Kilgore, Gregg County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.120(c)(5) and Texas Health and Safety Code, §341.031 by failing to submit a water sample from said public water system for copper and lead analysis; PENALTY: \$480; STAFF ATTORNEY: Lisa Z. Hernandez, Litigation Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas, 75701-3756, (903) 535-5100.

(2) COMPANY: Curiel Construction, Incorporated; DOCKET NUMBER: 98-0100-AIR-E; TNRCC ID NUMBER: EE-0739-E; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: construction material site; RULE VIOLATED: 30 TAC §111.143(3)(B) and Texas Health and Safety Code, §382.085(b) by transporting particulate material in an open-bodied truck without a complete cover; PENALTY: \$1,250; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9814652

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 25, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 25, 1998**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Charles Tucker dba C & R Muffler; DOCKET NUMBER: 98-0239-AIR-E; IDENTIFIER: Account Number DB-4842-J; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: state inspection station; RULE VIOLATED: 30 TAC §114.3(f) and the Act, §382.085(b), by issuing a vehicle inspection certificate without completely and properly performing all required emission tests; PENALTY: \$625; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Max Smith dba Calvert Concrete; DOCKET NUMBER: 98-0681-AIR-E; IDENTIFIER: Account Number WK-0238-M; LOCATION: Jarrell, Williamson County, Texas; TYPE OF FACILITY: specialty concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.085(b) and §382.0518(a), by operating without a permit or meeting the conditions of a standard exemption; PENALTY: \$2,160; ENFORCEMENT COORDINATOR: Mark Leidig, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: Crisp Welding Service, Incorporated; DOCKET NUMBER: 98-0267-AIR-E; IDENTIFIER: Account Number WN-0179-Q; LOCATION: Bridgeport, Wise County, Texas; TYPE OF FACILITY: hopper and conveyor manufacturing plant; RULE VIOLATED: 30 TAC §101.4 and the THSC, §382.085(a) and (b), by creating a nuisance condition by allowing paint over spray; and 30 TAC §116.110(a) and the THSC, §382.085(b) and §382.0518(a), by conducting outdoor spray painting and sandblasting operations without obtaining a permit or qualifying for an exemption from permitting; PENALTY: \$6,875; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4) COMPANY: Cross Roads Independent School District; DOCKET NUMBER: 98-0354-MWD-E; IDENTIFIER: Permit Number 13789-001; LOCATION: Malakoff, Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 13789-001 and the Code, §26.121, by failing to meet the permitted biochemical oxygen demand and total suspended solids limitations; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Diamond Shamrock Refining and Marketing Company; DOCKET NUMBER: 98-0252-AIR-E; IDENTIFIER: Account Numbers EE-0801-B, EE-0849-T, EE-0934-E, EE-0935-C, EE-0943-D, EE-0944-B, EE-0945-W, EE-0946-U, and EE-0983-O; LOCATION: Anthony and El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience stores; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by offering for sale gasoline for use as a motor vehicle fuel with an oxygen content of less than 2.7% by weight; PENALTY: \$13,680; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(6) COMPANY: Engineered Carbons, Incorporated; DOCKET NUMBER: 98-0179-AIR-E; IDENTIFIER: Account Number OC-0020-R; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: carbon black calcining plant; RULE VIOLATED: 30 TAC §101.4 and the THSC, §382.085(a) and (b), by emitting carbon black particulate matter in such concentration and of such duration as was or tended to adversely affect property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: \$15,000; ENFORCEMENT COORDINATOR: Lawrence King, (512)

239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: FFP Operating Partners, L. P.; DOCKET NUMBER: 98-0546-AIR-E; IDENTIFIER: Account Number EE-1608-N; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing site; RULE VIOLATED: 30 TAC §115.252(1) and the THSC, §382.085(b), by placing, storing, or holding in a stationary tank, reservoir, or other container gasoline which may ultimately be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure greater than 7.0 pounds per square inch absolute; and 30 TAC §114.100(a) and the THSC, §382.085(b), by supplying and/or dispensing gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(8) COMPANY: The Hertz Corporation; DOCKET NUMBER: 98-0525-AIR-E; IDENTIFIER: Account Number EE-1145-J; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: vehicle rental store; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by supplying and/or dispensing gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: \$600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(9) COMPANY: Houston Chemical Distributors, L.L.C.; DOCKET NUMBER: 98-0277-AIR-E; IDENTIFIER: Account Number GB-0122-E; LOCATION: Alcoa, Galveston County, Texas; TYPE OF FACILITY: water treatment chemical mixing plant; RULE VIOLATED: 30 TAC §101.4, §101.5, and the THSC, §382.085(a) and (b), by releasing vapors from an aqua ammonia spill that were in such concentration and of such duration as to be or tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, as to interfere with the normal use and enjoyment of animal life, vegetation, or property, and as to cause a traffic hazard or interference with normal road use; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Medina Electric Cooperative, Inc.; DOCKET NUMBER: 98-0466-AIR-E; IDENTIFIER: Account Number FJ-0012-P; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: fossil-fuel-fired steam generators; RULE VIOLATED: 30 TAC §122.121 and the Act, §382.054 and §382.085(b), by operating emission units at the site without a federal operating permit; and 30 TAC §122.130(a) and the Act, §382.054 and §382.085(b), by failing to submit a timely federal operating permit application; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: David D. Turner, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(11) COMPANY: Bauke Mulder; DOCKET NUMBER: 98-0356-AGR-E; IDENTIFIER: Enforcement Identification Number 12380; LOCATION: near Hico, Hamilton County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: The Code, §26.121, by allowing an unauthorized discharge of wastewater from the facility; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Claudia Chaffin, (512) 239-4717; REGIONAL OFFICES: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750 and 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Price Construction, Incorporated; DOCKET NUMBER: 98-0292-AIR-E; IDENTIFIER: Account Numbers 92-1169-G and 91-6664-N; LOCATION: Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: rock crushing and asphalt concrete plants; RULE VIOLATED: 30 TAC §116.115(a), §111.111(a)(8), Permit Numbers 21169 and T-17532, and the THSC, §382.085(b), by failing to control dust emissions from the rock crusher and asphalt plants at or below permitted levels; 30 TAC §116.115(a), Permit Number T-17532, and the THSC, §382.085(b), by failing to obtain written site approval prior to construction of the asphalt concrete plant; 30 TAC §116.115(a), §101.20(1), Permit Number 21169, and the THSC, §382.085(b), by failing to conduct a performance test; 30 TAC §101.4, §101.5, and the THSC, §382.085(a) and (b), by failing to control dust emissions causing a nuisance condition to adjacent property and a traffic hazard on a nearby federal highway; and 30 TAC §116.116(a), Permit Number 21169, and the THSC, §382.085(b), by failing to construct the rock crusher as represented in the permit application by installing a crusher with a higher production rate; PENALTY: \$9,360; ENFORCEMENT COORDINATOR: David D. Turner, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(13) COMPANY: Southwest Convenience Stores, Incorporated; DOCKET NUMBER: 98-0522-AIR-E; IDENTIFIER: Account Number EE-1007-W; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by offering for sale gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: \$600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9814557

Paul Sarahan

Director, Legal-Litigation Division

Texas Natural Resource Conservation Commission

Filed: September 15, 1998



Notices of Public Hearing

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations (CFR), §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 113 and to the SIP.

The commission proposes the repeal of §§113.31-113.68, concerning Lead from Stationary Sources. The proposed repeals will eliminate lead rules which no longer apply to active lead sources. In addition, the commission proposes renaming Subchapter B to National Emission Standards for Hazardous Air Pollutants (NESHAPs) (FCAA §112, 40 CFR 61).

This proposal was originally taken to hearing on September 8 and 9, 1998. However, due to an error in fulfilling all public hearing notification requirements for SIPs, the commission has scheduled another public hearing. The additional public hearing will be held in Austin on October 26, 1998, at 10:00 a.m. in Building F, Room 5108 of the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center. 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.

Written comments may be submitted to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 98006-113-AI. Comments must be received by 5:00 p.m., October 26, 1998. For further information, please contact Phil Harwell, Air Policy and Regulations Division, Office of Policy and Regulatory Development, (512) 239-1517.

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-9814673

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Notice is hereby given that under the requirements of the Texas Government Code, Subchapter B, Chapter 2001, and the Texas Health and Safety Code, §382.017, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning 30 TAC Chapter 285, relating to the on-site sewage facilities.

These proposed amendments will bring this chapter into conformity with House Bill (HB) 3059, passed by the 75th Legislature (1997), which amended Chapter 366 of the Health and Safety Code related to on-site sewage disposal systems. HB 3059 established that for single family residences in counties with a total population of less than 40,000, the regulatory authority for on-site sewage facilities may not condition the issuance of a permit to require the owner of an aerobic treatment system to have a maintenance contract. The proposed amendment reflects that in such situations the owner, after receiving the appropriate training, may either maintain the facility personally or enter into a maintenance contract. Also, HB 3059 modified the definition for on-site sewage disposal systems to allow for the use of cluster type system and expanded the definition of local governmental entity to allow public health districts to become authorized agents under this program. Finally, these amendments reflect the latest version of the National Sanitation Foundation International (NSF) criteria for the testing of proprietary treatment systems.

A public hearing on the proposal will be held October 22, 1998, at 10:00 a.m. in Room 254-S of TNRCC Building E, 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.

Written comments on the proposal should mention Rule Log Number 97150-285-WT and may be submitted to Lutrecia Oshoko, Office of Policy and Regulatory Development, MC 201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m.,

October 26, 1998. For further information or questions concerning this proposal, please contact Warren Samuelson, Certification and Compliance Division, (512) 239-4799.

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-9814634

Margaret Hoffman

Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Texas Parks and Wildlife Department

Gulf States Marine Fisheries Meeting

The Gulf States Marine Fisheries Commission will hold its 49th Annual Fall Meeting October 12-16, 1998. Texas is the host state and arrangements have been made to convene at the Four Points Hotel Riverwalk North, 110 Lexington Avenue, San Antonio, TX (210) 223-9461. All persons interested in the Gulf States Marine Fisheries Commission are invited to attend. For additional information please call Virginia K. Herring (601) 875-5912.

TRD-9814396

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: September 10, 1998



Request for Proposals

The Texas Parks & Wildlife Department (TPWD) is requesting proposals for fiscal year 1999. The Section 6 grants (money allotted to states from the Endangered Species Act) must concern a species (or a suite of species) that is federally listed as threatened or endangered or that is a species of concern for listing. For FY 99, we are estimating up to \$80,000 in new project money. Due to the reduced amount of new project funds available, most (but not all) of the money will fund TPWD projects.

General TPWD priorities for proposal selection include: projects that contribute to conservation solutions with an emphasis on public lands; projects that contribute technical assistance information that can be used by landowners and managers; and projects that generate new education and outreach materials and programs to reach the Texas public. Within the general priorities listed above, a variety of criteria are used to select projects, including the rarity of the species, the degree of threat, whether a void of information exists concerning it, whether the project will accomplish significant recovery for the species, and whether the project will have benefit to more than one species. To assist in developing relevant proposals, please see *A Plan for Action to Conserve Rare Resources in Texas* which includes priority ranks and species conservation needs for each major taxonomic group. The Plan is available from TPWD. Additional guidance may be obtained from recovery actions listed in U.S. Fish and Wildlife Service recovery plans.

The amount of funding available for individual projects varies; however, most projects average \$10,000 to \$20,000 per year and 1-4 years in length (private consultant contracts are limited to less than \$10,000 per year). Section 6 funds are made available on 3:1

matching basis from the U.S. Fish and Wildlife Service. TPWD requires its contractors to provide the 25% match. The match may be in the form of salaries, in-kind services, etc., and may exceed 25%. TPWD may circulate proposals received (without author's name if requested) for peer review. TPWD may then work with the proposal author to modify the project to both parties' satisfaction.

Proposal Guidelines. The proposal should provide the following information:

Need. State the problem which needs to be solved wholly or in part by this research/project. Include a brief discussion of the literature review relative to the problem.

Objective. State precisely the intended outputs from the effort, indicating the quality and the time of accomplishment.

Expected Results or Benefits. Describe how the results will be used and how their use will resolve the need described.

Approach. Describe how the research will be carried out. Include the methods(s) to be employed and the schedule to be followed. Also include the name of the principal investigator.

Location. Identify where the work will be done.

Estimated Cost. Provide the estimated cost, by year, for completion of the objective.

Deadline for receipt of proposals is 1 November, 1999. Proposals should be sent to: Gareth Rowell, Section 6 Coordinator, Wildlife Diversity Program, Texas Parks & Wildlife Department, 3000 IH 35, South, Suite 100 Austin, TX 78704 (512) 912-7011.

TRD-9814518

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: September 14, 1998



Texas State Board of Pharmacy

Election of Officers

The Texas State Board of Pharmacy announces the election of the following officers to serve from September 1, 1998 to August 31, 1999: Oren Peacock, R.Ph., President; Roberta High, R.Ph., Vice President; Bill Pittman, R.Ph., Treasurer.

TRD-9814474

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: September 14, 1998



Public Utility Commission

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas an application for sale, transfer, or merger on August 24, 1998, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 (Vernon 1998).

Docket Style and Number: Application for Sale, Transfer, or Merger of Lower Colorado River Authority. Docket Control Number 19788.

The Application: The Lower Colorado River Authority seeks approval of the acquisition of an undivided one-half interest in des-

ignated transmission facilities of Austin Energy, in accordance with Public Utility Regulatory Act §14.101. The Lower Colorado River Authority asserts that approval of this application will not result in a rate increase for its customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than October 9, 1998, the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Consumer Protection at (512) 936- 7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9814573

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 15, 1998



Notices of Applications for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 4, 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 InfoCom Services, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19831 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange switched services on a resale basis from the incumbent local exchange companies (ILECs) or other certified carrier using unbundled network elements obtained from ILECs using services and facilities provided by other carriers or using facilities owned or operated by the applicant.

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company of Texas, Inc., Sugar Land Telephone Company, Lufkin-Conroe Telephone Exchange, Inc., and any other ILEC or certified telecommunications provider.

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 30, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814540

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 15, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 9, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Data Recall, LLC., for a Service Provider Certificate of Operating Authority, Docket Number 19837 before the Public Utility Commission of Texas.

Applicant intends to provide basic local exchange service, including but not limited to, basic lines, and associated features, functions, and options, and local calling services through the resale of any and all services available for resale.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than September 30, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814542
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 10, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Integral Telecommunications Services, L.L.C., for a Service Provider Certificate of Operating Authority, Docket Number 19841 before the Public Utility Commission of Texas.

Applicant intends to provide business and residential facilities-based telecommunications services and proposes to provide recurring flat rate local exchange service, EAS service, toll restrictions, call control options, tone dialing, custom calling services, Caller ID and any other services which are available from the underlying incumbent local exchange carrier or other certificated carrier within the Applicant's service area.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 30, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814571
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Notice of Application to Change Determination of Demand From Non-Coincident Peak to Coincident Peak

Notice is given to the public of the filing with the Public Utility Commission of Texas on September 2, 1998, an application by South Texas Electric Cooperative, Inc., to change its determination

of demand from non-coincident peak to coincident peak pursuant to §§36.102- 36.105; 36.108-36.109; and 36.111 of the Public Utility Regulatory Act. A summary of the application follows.

Docket Title and Number: Application of South Texas Electric Cooperative, Inc., to Change Its Determination of Demand from Non-Coincident Peak to Coincident Peak, Docket Number 19825.

The Application: South Texas Electric Cooperative, Inc., (STEC) seeks approval of a tariff revision involving a change in the determination of the demand charge from a non-coincident peak to a coincident peak. The six member cooperatives, Jackson Electric Cooperative, Inc.; Karnes Electric Cooperative, Inc.; Nueces Electric Cooperative, Inc.; San Patricio Electric Cooperative, Inc.; Victoria Electric Cooperative, Inc.; and Wharton County Electric Cooperative, Inc. will be affected. Based upon historical usage, some of the customer cooperatives will experience a reduction in their cost of power and some of them will experience a short-term increase in the cost of power. STEC asserts that the cost of power it charges its members will be reduced over the long term because the change in rate will encourage a more efficient use of power.

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 no later than October 19, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 19285.

TRD-9814539
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Notice of Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 9, 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: Notification of Southwestern Bell Telephone Company (SWBT) to Institute Promotional Rates for Residence Optional Calling Plans, Pursuant to Substantive Rule §23.25. Tariff Control Number 19839.

The Application: SWBT is instituting promotional rates for residence customers newly subscribing to the 1 Hour Block of Time or the 15% Discount Optional Calling Plan between October 1, 1998 and December 28, 1998. During the promotional period, new subscribers of the 1 Hour Block of Time plan will receive a one-time credit of \$9.60 or a one-time credit of \$3.00 for subscribing to the 15% Discount Optional Calling Plan. SWBT requests an effective date of October 1, 1998.

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 October 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936- 7136.

TRD-9814541

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Notice of Complaint

On May 21, 1998, Integretel, Inc. (IGT) filed a complaint against GTE Southwest Incorporated (GTE-SW) and requested an investigation into the customer complaint threshold provision contained in GTE-SW's billing services agreement (agreement). IGT also requested that the Public Utility Commission of Texas (commission) void the non-automatic renewal clause and customer complaint threshold provision contained in the agreement for public policy reasons. This matter has been assigned Docket Number 19370. The commission has determined that the following issues are to be addressed in this docket.

1. Did GTE-SW violate the terms of the agreement?
2. Do the actions of GTE-SW, complained of by IGT, constitute discrimination and/or the impairment of competition as contemplate by PURA §55.06(1)-(2)?
3. If the answer to issue number 2, in whole or in part, is in the affirmative, what alternative business arrangements would satisfy the strictures imposed by PURA §5.006(1)-(2)?
4. What is the appropriate public interest standard that should guide the behavior of GTE-SW in the future when it structures compacts similar to the agreement?

The deadline for intervention is September 30, 1998. The hearing on the merits is scheduled to begin on Monday, January 11, 1999 at the Commission's offices located at 1701 North Congress Avenue in Austin, Texas. Any motion to intervene in this proceeding must reference Docket Number 19370 and must be filed by 3:00 p.m. on Wednesday, September 30, 1998. Any such motion should be mailed or delivered to the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. For information on intervening, please call the Public Utility Commission of Texas at (888) 782-8477 or (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9814543
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Notice of Entry into a Major Consulting Contract Pursuant to Texas Government Code §2254.030

On July 10, 1998, the Public Utility Commission of Texas (the commission) issued a Request for Proposals for Consulting Services to Provide Support in the Implementation of the WINDOWS NT Local Area Network pursuant to Texas Government Code Chapter 2254.

The commission has selected the proposal offered by Rainbow Analysis Systems Group, Inc., (RAS Group), which has its principal place of business at 8800 Business Park Drive, Austin, TX 78759. RAS Group is a HUB vendor certified by the General Services Commission.

RAS Group will assess the agency's technological needs to migrate from the use of a Novell operating system to the use of the Windows NT software program during the fiscal year 1999, and will assist the agency in executing the migration.

RAS Group will deliver required documentation for specifications, configuration and assessment information to the agency on or before September 14, 1998.

Based upon the results of the needs assessment and equipment and configuration recommendations, the agency will enter into a subsequent work plan agreement for RAS Group assistance in carrying out the recommended migration project.

The project commenced August 31, 1998 and will be completed by December 31, 1998.

The initial phase of the contract, the needs analysis, will not exceed a value of twelve thousand dollars. The second phase of the contract is estimated not to exceed forty thousand dollars. The total value of the contract is estimated not to exceed fifty-two thousand dollars.

For further information regarding this contract award, contact Susan K. Durso, Administrative Counsel, Public Utility Commission of Texas, PO Box 13326, Austin, TX 78711-3326.

TRD-9814572
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



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

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Bell County in Belton, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Addition to the Existing PLEXAR-Custom Service for Bell County in Belton, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19842.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Bell County in Belton, Texas. PLEXAR- Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Belton exchange, and the geographic market for this specific PLEXAR-Custom service is the Waco LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814570
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Notice of Petition for Rulemaking

The Public Utility Commission of Texas (commission) has received a petition for rulemaking from the Lower Colorado River Authority, designated as Project Number 19809 - *Petition for Rulemaking to Amend Substantive Rule §23.67(g)(2), Transmission Cost of Service Recovery*. The petition, which was filed on August 28, 1998, requests that the commission amend Substantive Rule §23.67 to permit a utility to include the costs of a statewide weather-data collection network to be included in its wholesale transmission rates.

Persons who are interested in obtaining a copy of the petition for rulemaking may do so by contacting the commission's Central Records Office, 1701 N. Congress Ave., P.O. Box 13326, Austin, Texas 78711-3326. Persons who wish to file written comments on the petition may do so not later than October 16, 1998. Comments (16 copies) should be filed in the commission's Central Records Office. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 19809.

In a separate project, Project Number 18703 - *Review of Transmission Access Rules, Substantive Rules §23.67 and §23.70*, the commission is considering broader changes to its transmission rules and expects to publish a proposed rule requesting comments on the proposed changes. The commission may incorporate into its notice of the proposed rule a request for comments concerning the proposed amendment filed by the Lower Colorado River Authority in Project Number 19809. If it does so, the comments filed by October 16, 1998 in Project Number 19809 will be incorporated into the summary of comments filed in Project Number 18703. Participants will not need to duplicate their comments in both projects.

TRD-9814569
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Public Notices of Interconnection Agreements

On September 1, 1998, Millennium Telecom, L.L.C. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19822. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19822. 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 October 2, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19822.

TRD-9814536
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



On September 1, 1998, Trans National Telecommunications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19818. 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 19818. 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 October 7, 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 19818.

TRD-9814537
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



On September 8, 1998, AirTouch Paging of Texas and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19835. 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 19835. 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 October 7, 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 19835.

TRD-9814538
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1998



Texas Racing Commission

Notice of Public Hearing

Pursuant to Texas Civil Statutes, Article 179e, §18.02, an administrative law judge will conduct an administrative hearing for the Texas Racing Commission in SOAH Docket No. 476-98-0801, the application for a pari-mutuel Class 2 horse racetrack license in Parker County. The hearing will begin at 9:00 a.m. on Tuesday, October 6, 1998, at the State Office of Administrative Hearings, Stephen F. Austin Building, 1700 North Congress, Suite 1100, Austin, Texas. All interested persons are welcome to attend.

The applicant, Parker County Squaw Creek Downs, asserts that it is qualified to receive a Class 2 horse racetrack license.

Persons who have intervened and granted party status are: Lone Star Race Park, Ltd., Texas Thoroughbred Association, Texas Horsemen's Partnership, L.L.P., City of Grand Prairie and Grand Prairie Sports Facilities Development Corporation.

The nonparty participants are: Weatherford Chamber of Commerce, United Horsemen's Association and Robert E. Brooks.

The hearing will be conducted in accordance with the Administrative Procedures Act, Chapter 2001, Government Code, State Office of Administrative Hearings Rules of Procedure 1 Texas Administrative Code Chapter 155 and Texas Racing Commission Rules 16 Texas Administrative Code Chapter 307.

Questions regarding this matter should be directed to Roselyn Marcus, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, (512) 833-6699.

TRD-9814512
Roselyn Marcus
General Counsel
Texas Racing Commission
Filed: September 14, 1998



Texas Department of Transportation

Public Notices

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning proposed approval of: construction services at Hondo Municipal Airport, Grayson County Airport at Sherman/Dennison, Mid-Valley Airport at Weslaco, and Gladewater Municipal Airport; a airport master plan at Sulphur Springs Municipal; and design and construction services at Perryton Ochiltree County Airport.

The public hearing will be held at 9:00 a.m. on Friday, October 9, 1998, at 150 East Riverside, South Tower, 5th Floor Conference Room, Austin, Texas 78704. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities and special communication or accommodation needs planning to attend the hearing 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 Eloise Lundgren, Director, Public Information Office, 125 E. 11th St., Austin, Texas 78701-2483, (512) 463-8588 at least two working

days prior to the hearing so that appropriate arrangements can be made.

For additional information please contact Suetta Murray, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4504.

TRD-9814676
Joanne Wright
Associate General Counsel
Texas Department of Transportation
Filed: September 16, 1998



In accordance with, Transportation Code, §201.602, the Texas Transportation Commission will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, October 29, 1998, at 9:00 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend the hearing 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 Eloise Lundgren, Director, Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2383, (512) 463-2810 at least two working days prior to the hearing so that appropriate arrangements can be made.

Copies of the criteria/information will be available beginning September 29, 1998, at the department's Riverside Annex, 118 E. Riverside Drive, Bldg. 118, Room 2B-6, Austin, (512) 486-5050. Written comments may be submitted to the Texas Department of Transportation, Attention: Alvin R. Luedecke, Jr., P.E., P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on November 9, 1998.

TRD-9814675
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: September 16, 1998



Request for Qualification Statements

The Airport Sponsors listed below, through their agent, the Texas Department of Transportation (TxDOT), intend to engage Aviation Professional Engineering Services pursuant to Chapter 2254, Subchapter A, of the Government Code. The Aviation Division of TxDOT will solicit and receive qualifications for professional engineering design services as described in the project scope for each individual project listed below:

Airport Sponsor: City of Alice and County of Jim Wells; Alice International; TxDOT Project Number: 9916ALICE; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to reconstruct southeast end of Runway 13-31, Taxiway B and apron; rehabilitate, stripe and mark Runway 13-31 and 17-35; complete parallel taxiway to Runway 31 end; construct stub taxiway to Runway 31 end; rehabilitate, repair, and mark taxiway A; rehabilitate taxiway B, C, taxiway to Runway 35 and apron; replace perimeter fencing and install erosion/sedimentation controls at the Alice International Airport. Project Manager: John Wepryk.

Airport Sponsor: City of Alpine; Alpine-Casparis Airport; TxDOT Project Number: 9924ALPNE; Project Scope: Provide engineering/design services to overlay, stripe and mark Runway 1-19; rehabilitate, stripe and mark Runway 5-23; rehabilitate and mark taxiways; reconstruct hangar access taxiways; install taxiway centerline reflectors; expand concrete apron; reconstruct/rehabilitate apron; replace windcone; install supplemental windcone Runway 1 end; install exit and hold signs for Runway 1-19; and install deer-proof fencing at the Alpine-Casparis Municipal Airport. Project Manager: Bijan Jamalabad.

Airport Sponsor: County of Andrews; Andrews County Airport; TxDOT Project Number: 9906ANDRW; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to rehabilitate, stripe and mark Runway 15-33; rehabilitate stopways; rehabilitate, stripe and mark Runway 2-20; rehabilitate and mark taxiways; install taxiway centerline reflectors; rehabilitate apron; install runway end identifier lights for Runway 2-20 and Runway 33; and install segmented circle at the Andrews County Airport. Project Manager: Bijan Jamalabad.

Airport Sponsor: City of Atlanta; Hall-Miller Municipal Airport; TxDOT Project Number: 9919ALNTA; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to rehabilitate, stripe and mark Runway 5-23; reconstruct/widen/mark taxiway to apron; construct and mark taxiway to Runway 5; site preparation for taxiway extension; rehabilitate and mark partial parallel taxiway; install taxiway centerline reflectors; reconstruct apron; install precision approach path indicator (PAPI-2) for Runway 5; install runway end identifier lights for Runway 5-23; replace rotating beacon tower; and install erosion/sedimentation controls at the Hall-Miller Municipal Airport. Project Manager: John Wepryk.

Airport Sponsor: City of Bay City; Bay City Municipal Airport; TxDOT Project Number: 9913BAYCY; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to rehabilitate, stripe and mark Runway 13-31; rehabilitate and mark parallel taxiway; construct stub taxiway for hangar access taxiways; reconstruct hangar access taxiways; reconstruct taxiway intersection; overlay apron; expand apron; install precision approach path indicator (PAPI-2) for Runway 13; install runway end identifier lights for Runway 13; rehabilitate lighted windcone and segmented circle; install supplemental lighted windcone northwest corner; and upgrade runway signage at the Bay City Municipal Airport. Project Manager: John Wepryk.

Airport Sponsor: County of Stephens; Stephens County Airport; TxDOT Project Number: 9923BRKRG Project Scope: Prepare

an Airport Layout Plan and provide engineering/design services to rehabilitate, stripe and mark one crosswind runway; rehabilitate rotating beacon; and replace medium intensity runway lights for Runway 17-35 at the Stephens County Airport. Project Manager: Steve Roth.

Airport Sponsor: City of Brownwood; Brownwood Regional; TxDOT Project Number: 9923BWNWD; Project Scope: Prepare an Airport Layout Plan and drainage study; provide engineering/design services to rehabilitate, stripe and mark Runway 17-35; replace medium intensity runway lights for Runway 17-35; overlay, stripe and mark Runway 13-31; replace medium intensity runway lights for Runway 13-31; reconstruct taxiway D; rehabilitate taxiways A, B, and C; rehabilitate public apron, north T-hangar apron and south T-hangar apron; rehabilitate concrete slabs on apron; provide power to hold signs for Runway 17-35; improve drainage at north T-hangar apron; and reconstruct north T-hangar apron at the Brownwood Regional Airport. Project Manager: Steve Roth Airport Sponsor: City of Cleveland; Cleveland Municipal; TxDOT Project Number: 9920CLVND; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to rehabilitate, stripe and mark Runway 16-34; rehabilitate and mark parallel taxiway; construct cross taxiway and taxilane; rehabilitate hangar access taxiway; reconstruct/rehabilitate main apron; rehabilitate north apron; install runway exit signs; install taxiway centerline reflectors; relocate lighted windcone and segmented circle; and replace medium intensity runway lights radio controller at the Cleveland Municipal Airport. Project Manager: John Wepryk.

Airport Sponsor: City of Corsicana; C. David Campbell-Field Corsicana; TxDOT Project Number: 9918CORSI; Project Scope: Provide engineering/design services to overlay, stripe and mark Runway 14-32; rehabilitate and mark parallel taxiway to Runway 14-32; reconstruct hangar access taxiways; rehabilitate and mark hangar access taxiway; install taxiway centerline reflectors; overlay apron; upgrade runway signage; and install precision approach path indicator (PAPI-2s) for Runway 4-22 and Runway 14-32 at the C. David Campbell Field-Corsicana . Project Manager: Alan Schmidt.

Airport Sponsor: City of Decatur; Decatur Municipal Airport; TxDOT Project Number: 9902DECTR; Project Scope: Provide engineering/design services to rehabilitate, stripe and mark Runway 16-34; rehabilitate and mark parallel taxiway; construct stub taxiway, hangar access taxiway, and apron; rehabilitate apron; relocate lighted windcone and segmented circle; and upgrade runway lighting and signage at the Decatur Municipal Airport. Project Manager: Alan Schmidt.

Airport Sponsor: City of Fort Worth; Fort Worth Spinks Airport; TxDOT Project Number: 9902SPNKS; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to rehabilitate, stripe and mark Runway 17R-35L; rehabilitate and mark taxiways A,B,C,D,E,F,G and H; install lighted guidance signs; and replace rotating beacon and tower at the Fort Worth Spinks Airport . Project Manager: Alan Schmidt.

Airport Sponsor: City of Galveston; Scholes Field Airport; TxDOT Project Number: 9912GLVST; Project Scope: Prepare a drainage study; and provide engineering/design services to improve pavements on Runway 13-31 and taxiways; replace rotating beacon and tower; improve airport drainage; and install erosion/sedimentation controls at the Galveston International Airport. Project Manager: John Wepryk.

Airport Sponsor: City of Gatesville and County of Coryell; Gatesville City-County Airport; TxDOT Project Number: 9909GATES; Project Scope: Prepare an airport layout plan and provide engineering/design services to extend Runway 17-35, 7 end; widen Runway

17-35; overlay, stripe and mark Runway 17-35; relocate medium intensity runway lights for Runway 17-35; extend medium intensity runway lights for Runway 17-35; overlay stub taxiway; rehabilitate hangar access taxiway; reconstruct apron and hangar access taxiway; install precision approach path indicator-2s for Runway 17-35; install runway end identifier lights for Runway 17-35; and install erosion/sedimentation controls at the Gatesville City-County Airport. Project Manager: Alan Schmidt.

Airport Sponsor: County of Ector; Odessa-Schlemeyer Field; TxDOT Project Number: 9906ODESA; Project Scope: Provide engineering/design services to realign, construct, stripe and mark new Runway 11-29; construct parallel and stub taxiways to Runway 11-29; install medium intensity runway lights for Runway 11-29; rehabilitate hangar access taxiways; install taxiway centerline reflectors; reconstruct apron and improve drainage; install precision approach path indicator (PAPI-4s) for Runway 11-29; install runway end identifier lights for Runway 11-29; install runway signs for Runway 11-29; replace sign panels Runway 2-20; remove underground fuel storage tanks; and install erosion/sedimentation controls at the Odessa-Schlemeyer Field Airport. Project Manager: Bijan Jamalabad.

Airport Sponsor: City of Plainview and County of Hale; Hale County Airport; TxDOT Project Number: 9905PLNVW; Project Scope: Prepare an Airport Layout Plan and provide engineering/design services to overlay, stripe and mark Runway 4-22; overlay, stripe and mark Runway 13-31; rehabilitate and mark taxiways; and rehabilitate west side and east side aprons at the Hale County Airport. Project Manager: Bijan Jamalabad.

Airport Sponsor: County of Aransas; Aransas County Airport; TxDOT Project Number: 9916RCKPT; Project Scope: Provide engineering/design services to improve airport airside drainage; construct/expand apron; relocate elements associated with new apron; improve terminal area drainage; replace visual approach slope indicator with precision approach path indicator (PAPI-4) for Runway 14; install runway end identifier lights for Runway 32; update airfield lighting systems; install new rotating beacon and tower; and install security fencing with gates on the east side at the Aransas County Airport. Project Manager: John Wepryk.

Airport Sponsor: County of Gaines; Gaines County Airport; TxDOT Project Number: 9905SEMNL; Project Scope: Provide engineering/design services to overlay, stripe and mark Runway 17-35; rehabilitate, stripe and mark Runway 8-26; mark parallel taxiways; install precision approach path indicator (PAPI-2) for Runway 26; and replace segmented circle at the Gaines County Airport. Project Manager: Bijan Jamalabad.

Airport Sponsor: County of Rusk; Rusk County Airport; TxDOT Project Number: 9910HENDR; Project Scope: Provide engineering/design services to rehabilitate, stripe and mark Runway 16-34; rehabilitate, stripe and mark Runway 12-30; rehabilitate taxiways; install taxiway centerline reflectors; rehabilitate apron; upgrade runway exit lights at the Rusk County Airport. Project Manager: John Wepryk.

Interested firms which do not already have a copy of the Form 439, entitled "Aviation Consultant Services Questionnaire," (August 1995 version) may request one from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form is also available on high density 3 1/2" diskette in Microsoft Excel 5.0, and may be ordered from the above address with remittance of \$2.50 to cover costs. The form may also be downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/insdot/orgchart/avn/avninfo/avninfo.htm>. Download the file from the selection "Consultant Services

Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

Two completed, unfolded copies of Form 439 (August 1995 version), for each project of interest to the consultant must be postmarked by U. S. Mail midnight October 9, 1998 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on October 13, 1998; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. October 13, 1998 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The three pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

Each airport sponsor's duly appointed committee will review all professional qualifications and select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantaged Business Enterprises (DBE) participation, design schedule, and other project matters, prior to the final selection process. The final consultant selection by the sponsor's committee will generally be made following the completion of review of proposals and/or consultant interviews. Each airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-9814674

Joanne Wright

Associate General Counsel

Texas Department of Transportation

Filed: September 16, 1998

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Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §§52.1 - 52.8, concerning Environmental Review and Public Involvement, the Texas Turnpike Authority division (TTA) of the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed new location highway/tollway project in Williamson and Travis Counties, Texas.

The TTA, in cooperation with the Federal Highway Administration (FHWA), will prepare a draft environmental impact statement (EIS) on a proposal to construct the northern segment, Segment A, of State Highway 130. State Highway 130 - Segment A is proposed to extend from IH 35 at State Highway 195 north of Georgetown in Williamson County to US Highway 290 east of Austin in Travis County.

This Notice of Intent (NOI) supersedes an NOI issued by the Texas Department of Transportation on January 3, 1995. This NOI also serves to inform the public that the proposed project has been identified as a toll road candidate. Accordingly, TxDOT has assigned project development responsibilities to TTA.

As currently envisioned, in its entirety State Highway 130 will extend from north of Georgetown to IH 10 near Seguin in Guadalupe County. It will be located generally parallel to and east of Interstate Highway 35 and the urban areas of Austin, San Marcos and New Braunfels. The total length of proposed State Highway 130 is 143.5 kilometers (89 miles). The proposed State Highway 130 facility is being developed in three segments with each segment having logical termini and independent utility. FHWA and TTA will prepare an environmental impact statement for each of the three independent segments.

The length of Segment A, which is the subject of this NOI, varies depending on the selected alternative, from approximately 41.5 kilometers (25.7 miles) to 46.6 kilometers (28.9 miles). The purpose of proposed State Highway 130, Segment A is to relieve congestion on Interstate 35 by providing an alternative route for those who commute between Austin and surrounding areas as well as drivers desiring to bypass the central business areas of Austin, Round Rock and Georgetown. The proposed action will also provide improved access and increased mobility to urbanized areas in the proposed corridor; help support planned business and residential growth in various areas throughout the project corridor; and provide needed freeway access from surrounding areas to the proposed Austin Bergstrom International Airport.

As currently envisioned the proposed Segment A facility will be a controlled access toll road; thus, in conjunction with the EIS and selection of a preferred alternative, the TTA will conduct a toll feasibility study to evaluate the viability of developing the selected alternative as a toll road and financing it, in whole or part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments, will be evaluated for how well they meet the stated purpose and need for the proposed project. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

The draft EIS for Segment A will address a build alternative including multiple alternative alignments. Alternatives to the proposed action, which will also be discussed in the EIS, will include: (1) taking no action, or the "no build" alternative, and (2) improving existing roadways in the project area. The build alternatives include multiple alternative alignments along new location rights-of-way connecting Interstate 35 to U.S. Highway 290.

Impacts caused by the construction and operation of Segment A of State Highway 130 will vary according to the alternative alignment utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction and operation of the roadway; water quality impacts from construction areas and roadway stormwater runoff; impacts to waters of the United States including wetlands from right-of-way encroachment; and impacts to residences and businesses.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. Public meetings for the Segment A project were held on October 25, 1994, at Everett Williams Elementary School in Georgetown, Texas; on October 27, 1994, at Manor High School in Manor Texas; on April 9, 1996, at Bluebonnet Trail Elementary School in Austin, Texas; on July 15, 1997, at Park Crest Middle School in Pflugerville, Texas; and on July 17, 1997, and February 3, 1998, at Hopewell Middle School in Round Rock, Texas. At these meetings, public comments on the proposed action

and alternatives were requested. In addition, a public hearing will be held after publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to proposed Segment A of State Highway 130 are addressed and all significant issues identified, comments and suggestions are invited from all parties.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 936-0983.

TRD-9814637

James W. Griffin, P.E.

Interim Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: September 16, 1998



Texas Water Development Board

Request for Proposals for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (board) requests the submission of water research proposals leading to the possible award of contracts for Fiscal Year 1999. Guidelines for water research proposals, which include an application form and more detailed research topic information, will be supplied by the board.

Description of Research Objectives. All water research applications must address a portion of the water research topic priority list. Proposals are requested for the following three priority research topics: (1) Assessment of Weather Modification as a Water Management Strategy - research to include the evaluation of the quantity, reliability, and cost of weather modification as a water supply for both agricultural and municipal purposes, utilizing generally accepted statistical and hydrological methodologies; (2) Assessment of Brush Control as a Water Management Strategy - research to include the evaluation of the quantity, reliability, and cost of brush control as a water supply for both agricultural and municipal purposes, utilizing generally accepted statistical and hydrological methodologies; (3) Regional Rural Water and Wastewater Authorities in Economically Distressed Areas - evaluate the need and possibility of establishing regional rural authorities in the economically distressed areas and the projected start-up requirements for the authorities.

Description of Funding Consideration. Up to \$200,000 has been initially authorized for water research assistance from the board's Research and Planning Fund for this research. Following the receipt and evaluation of all applications, the board may adjust the amount of funding initially authorized for water research. Up to 100% funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state agencies. In the event that acceptable proposals are not submitted, the board retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete water research application form, including the required attachments, must be filed with the board prior to 5:00 p.m., November 13, 1998. Proposals

must be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Applications will be evaluated according to 31 Texas Administrative Code §355.5 and the proposal rating form included in the board's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the board to obtain these guidelines. Requests for information, the board's rules covering the Research and Planning Fund, detailed evaluation criteria, more

detailed research topic information, and the guidelines may be directed to Ms. Phyllis Thomas at the preceding address or by calling (512) 463-3154.

TRD-9814667
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 16, 1998



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