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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# 98-076 (RQ-1112). Request from The Honorable Rodney Ellis, Chair, Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, concerning clarification of Attorney General Opinion DM-464 (1997): Time Payment Fee imposed by section 51.921, Government Code.

Summary. The \$25.00 time payment fee authorized by section 51.921 of the Government Code must be assessed once per judgment of conviction when a defendant opts not to pay a fine, court costs, or restitution immediately. A court may not assess a second time payment fee when a payment plan is reinstated after default. Local governments retain their statutory authority to enforce payment of fines.

LO# 98-077 (RQ-1095). Request from The Honorable Mark Edwards, District Attorney, 32nd Judicial District of Texas, P.O. Box 1038, Sweetwater, Texas, 79556, concerning authority of a city marshal to investigate a matter that occurred outside the city limits of his municipality but within the same county.

Summary. A city marshal is authorized to investigate any crime that occurs outside the limits of his municipality but within the county in which the municipality is located.

TRD-9815020
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: September 23, 1998



Requests for Opinions

RQ-1186. Requested from The Honorable Carl E. Lewis, County Attorney, Nueces County Courthouse, 901 Leopard, Room 206,

Corpus Christi, Texas, 78401-3680, concerning method of calculation of "gross income" for purposes of chapter 171, Local Government Code, with regard to conflicts of interest of local public officials.

RQ-1187. Requested from The Honorable Carlos F. Truan, Chair, International Relations, Trade & Technology Committee, Texas Senate, P.O. Box 12068, Austin, Texas, 78711-2068, concerning whether a visiting district judge may simultaneously hold a ranking position with a state university.

RQ-1188. Requested from The Honorable Ken Armbrister, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, concerning constitutionality of Tax Code section 26.05, regarding the notice and hearing requirements for a property tax increase.

RQ-1189. Requested from The Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910, concerning authority of a home rule city to repeal an "extended hours" ordinance adopted under section 105.03, Alcoholic Beverage Code.

RQ-1190. Requested from The Honorable Michael P. Fleming, Harris County Attorney, 1019 Congress, 12th Floor, Houston, Texas, 77002-1700, concerning procedure for receiving and refunding cash bail posted in criminal cases under article 17.02, Texas Code of Criminal Procedure.

TRD-9814943
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: September 21, 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 IV. School Land Board

Chapter 155. Land Resources

Subchapter A. Coastal Public Lands

31 TAC §155.17

The School Land Board adopts on an emergency basis new §155.17, concerning emergency provisions authorizing actions necessary to respond to the erosional effects of Tropical Storm Frances along bay and estuary shorelines of the Texas Gulf coast. 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 and rain which greatly exceeded normal levels caused substantial coastal flooding and erosion in Aransas, Nueces, Calhoun, Jackson, Galveston, Harris, Matagorda, Brazoria, Refugio, and San Patricio counties, Texas. Following the landfall and the inland movement of Tropical Storm Frances, concerned littoral property owners and citizens with interest in coastal public lands along the Texas coast requested information and assistance regarding their ability to rebuild or repair structures on submerged state-owned land or to take actions to address erosion of the shoreline. The School Land Board determined it was necessary to adopt an emergency rule allowing repair and rebuilding of permitted structures and to conduct erosion response efforts and to waive certain fees.

The School Land Board 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 rule because this rule is not applicable to private property. This rule is adopted in response to a real and substantial 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 626, Austin, Texas 78701-1495, facsimile number (512) 463-6311.

The new section is adopted on an emergency basis under Texas Natural Resources Code, §33.064 which provides the School Land Board with the authority to adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter.

§155.17. Emergency Provisions Authorizing Actions Necessary to Respond to the Erosional Effects of Tropical Storm Frances Along Bay and Estuary Shorelines of the Texas Gulf Coast.

(a) Purpose. The purpose of this rule is to allow littoral property owners in certain Texas bays and estuaries to repair and rebuild certain structures damaged or destroyed by Tropical Storm Frances, to take certain actions to address the erosional effects of Tropical Storm Frances and to waive certain fees.

(b) Applicability. This rule applies only to Aransas, Nueces, Calhoun, Jackson, Galveston, Harris Matagorda, Brazoria, Refugio, and San Patricio counties, Texas. This rule shall be in effect for 120 days from the date of filing with the Office of the Secretary of State. Upon expiration of the 120 day period, the Board, at its discretion, may extend this rule for a time period not to exceed 60 days. This rule does not apply to gulf-fronting beaches or other areas fronting the Gulf of Mexico.

(c) Definitions. For the purposes of this section only, the following terms and words shall have the following meaning.

(1) Board - School Land Board.

(2) Contract - Any lease, easement, registration, permit or other document issued by the General Land Office authorizing a project on submerged state-owned land.

(3) Grantee - Any person, company or entity that is currently under contract from the General Land Office authorizing a project on submerged state-owned land.

(4) Person - An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, or any governmental entity.

(5) Structures - As used in this section, "structure" is defined in §155.1(c) of this title, (relating to General Provisions).

(d) Structures authorized by current General Land Office contracts.

(1) Rebuilding to pre-Tropical Storm Frances dimensions.

(A) Grantees shall adhere to any specific contractual provisions regarding repair and rebuilding structures as provided in the current contract.

(B) Grantees must rebuild or repair the structures to the original specifications and conditions as provided in current contract in the absence of specific provisions regarding repair and rebuilding as described in the previous paragraph.

(2) Increasing or decreasing the size of structure.

(A) If grantee desires to rebuild the same type of structure but smaller than provided in current contract, grantee may

rebuild under current contract, and General Land Office will amend the current contract and waive the amendment fee. If the General Land Office field office staff deems it appropriate, the General Land Office may convert the contract to a Structure Registration as authorized in §155.5 of this title, (relating to Registration of Structures) and waive the one-time registration fee.

(B) If General Land Office field office staff determine that a grantee must rebuild a larger structure than provided in current contract and the need for a larger structure is due to erosion caused by Tropical Storm Frances, grantee may rebuild under current contract. The General Land Office will amend the contract to reflect the new dimensions, waive amendment fee, and adjust the fees accordingly. If the new length is in excess of 100 feet, and therefore no longer eligible for a structure registration, the General Land Office will convert the contract to a 5-year easement with appropriate fees.

(e) Bulkheads.

(1) Grantees may rebuild permitted bulkheads to the pre-Tropical Storm Frances location, and may fill to the same location as existed immediately prior to the storm and as provided for in current contract.

(2) Littoral property owners with bulkheads constructed on private property may rebuild the bulkhead and may fill to the same location as existed immediately prior to Tropical Storm Frances.

(3) Littoral property owners with shoreline that was not bulkheaded may fill to the same location as existed immediately prior to Tropical Storm Frances.

(4) IN NO CIRCUMSTANCE MAY ANY PERSON CONSTRUCT ANY BULKHEAD OR PLACE FILL THAT EXTENDS THE SHORELINE INTO THE ADJACENT WATER BODY BEYOND THE PRE-STORM LOCATION AS INDICATED ON THE UNITED STATES GEOLOGICAL SURVEY (USGS) NAPP

1995 DOQQ AERIAL PHOTOGRAPHS ON FILE AT THE GENERAL LAND OFFICE UNLESS THE LITTORAL PROPERTY OWNER PRESENTS EVIDENCE TO GENERAL LAND OFFICE FIELD OFFICE STAFF THAT THE LOCATION OF THE PRE-TROPICAL STORM FRANCES SHORELINE WAS IN A DIFFERENT LOCATION.

(f) NOTICE. THIS RULE IS PROMULGATED TO ASSIST COASTAL LITTORAL PROPERTY OWNERS RESPONDING TO THE CALAMITOUS IMPACTS OF TROPICAL STORM FRANCES. IN NO CIRCUMSTANCE OR MANNER SHALL THESE RULES BE CONSTRUED AS THE BOARD'S ACQUESCENCE OR AGREEMENT TO THE LOCATION OF THE BAY SHORELINE INDICATED ON THE USGS NAPP 1995 DOQQ AERIAL PHOTOGRAPHS AS THE BOUNDARY BETWEEN STATE AND PRIVATE LAND (PARTICULARLY IF SUBMERGED STATE-OWNED LAND WAS PREVIOUSLY FILLED WITHOUT APPROPRIATE AND LEGAL AUTHORIZATION). THIS RULE WILL NOT OPERATE TO WAIVE CLAIMS THAT HAVE BEEN OR MAY BE ASSERTED BY THE STATE FOR TITLE TO ILLEGALLY FILLED SUBMERGED STATE-OWNED LANDS.

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

TRD-9814781

Garry Mauro
Chairman, School Land Board
School Land Board

Effective date: September 17, 1998

Expiration date: January 15, 1999

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



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 91. Texas Register

The Office of the Secretary of State, Texas Register, proposes amendments and new sections for Chapter 91 concerning the Texas Register. Amendments are proposed for §§91.1, 91.5, 91.7, 91.13, 91.61, 91.63, and 91.122. Sections 91.14, 91.62 and 91.66 are proposed new. Section 91.28, concerning the procedure for filing notice of open meeting is proposed for repeal. It will be replaced by new §91.62, concerning electronic procedures for filing open meeting documents.

The Texas Register proposes to revise its rules to establish electronic filing procedures for notices of open meetings. The rules will establish procedures for internet filing and publication of meeting notices. Full text of meeting notices will become available promptly upon filing with the Office of the Secretary of State through the Texas Register internet site. The rules will replace the current practice, which delays publication of meeting notice summaries until the next print issue of the Texas Register. The summaries will no longer appear in the print Texas Register because few notices appear in print before the meetings are held. The Secretary of State will continue to post the meeting notices in the lobby of the James Earl Rudder State Office Building, 1019 Brazos, Austin, Texas. Copies of meeting notices will continue to be available from the Texas Register office.

In Subchapter A, the proposed amendments and new rules change the definition of "Register" to include internet publication. The reference to open meeting filing deadlines is deleted from §91.5, concerning deadlines because submissions received through the new web form and file transfer protocol (FTP) format will be accepted and published as they are received on the Texas Register web site 24 hours a day, seven days a week. In §91.7 the roles of liaisons and certifying officials are clarified. In §91.13 the time for rejection notification is amended to reflect the publication deadline for rules and miscellaneous documents instead of the filing date. Section 91.14 establishes an e-mail notification procedure for open meeting submissions that are not accepted for publication.

In Subchapter B, the proposed amendments and new rules establish new procedures for state and regional agencies to submit the full text of meeting notices in electronic format. The new procedures are similar to those state agencies currently follow to submit rules and miscellaneous documents. The rules introduce a new web-based filing form for open meeting notices, and delete the existing TR-3 form for open meeting submissions. The new web submission procedure will permit agency liaisons to submit and cancel meeting notices at all times. The new rules establish e-mail notification for acknowledgment of receipt or rejection of filing.

In Subchapter C, §91.122, the reference to copies of the Texas Register on diskette is deleted because the Texas Register is no longer sold in diskette format.

Dan Procter, director of the Texas Register, has determined that for the first five-year period the rules are in effect, there may be fiscal implications for state or regional agencies as a result of administering the rules. If an agency does not have a personal computer with access to the internet, that agency will have difficulty filing a notice of open meeting in compliance with these proposed rules. Purchase of a personal computer and acquisition of internet access should not exceed \$2,000. Any necessary periodic access or maintenance charges would be in addition to the \$2,000 estimate. There will be no fiscal implications for local government.

Mr. Procter also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated will be that open meeting notices will become more conveniently available to the public before the meetings are held. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing to Dan Procter, Director, Texas Register, Office of the Secretary of State, 1019 Brazos, Room 245, Austin, Texas 78701 or via e-mail, dprocter@sos.state.tx.us.

Subchapter A. Administrative

1 TAC §§91.1, .91.5, 91.7, 91.13, 91.14

The amendments and new rule are proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The proposal affects Government Code, Chapter 2002, Subchapter B, §2002.011.

§91.1. *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) Electronic transmission - - The submission of electronic data to the Texas Register by ~~telecommunications,~~ Internet, file transfer protocol (FTP) via Internet, e-mail or diskette.

(8) - (10) (No change.)

(11) Register—The Texas Register established by the Government Code, Chapter 2002, Subchapter B. Contents of the Register shall be published in print or through the Internet.

(12) - (14) (No change.)

§91.5. *Publication Deadlines.*

(a) Rules: 12:00 noon, Monday, the week before publication. Miscellaneous documents ~~[and open meetings]:~~ 12:00 noon, Wednesday, the week before publication. When a state holiday falls on Monday or Wednesday, the deadline will be the day before Monday or Wednesday that is not a Saturday, Sunday, or state holiday.

(b) (No change.)

§91.7. *Liaison and Certifying Official.*

The liaison ~~[and certifying official sign]~~ signs the submission form that accompanies a filing to ~~[certify] verify~~ that the document ~~[before submitting it to the Texas Register]~~ is ready for publication and conforms to Texas Register rules. The certifying official signs the submission form for rules and other documents to certify that the document is authorized by the agency. Notify us by letter to designate a liaison, a certifying official, and their alternates if applicable. After filing, the liaison [they] must be available to answer questions about documents [the document]. If we fail to reach the liaison, we may reject or postpone publication of the document.

§91.13. *Nonacceptance of Rules and Miscellaneous Documents.*

(a) We may reject documents that do not conform to the Government Code and to the Texas Register rule requirements. We will notify the agency liaison in writing when a document fails to conform to our rules. With the permission of the agency liaison, we will attempt to correct a format error on its first occurrence. If the agency repeats the format error in a future filing, we will reject the document. If we reject a document, we will notify the liaison in writing within 10 days of the ~~[filing date]~~ publication deadline explaining why the document is rejected.

(b) (No change.)

§91.14. *Nonacceptance of Open Meetings Documents.*

(a) We may reject open meeting documents that do not conform to the Texas Register requirements. We will notify the agency liaison by e-mail or fax when an open meeting submission fails to conform to our rules.

(b) Reasons for rejecting a document include the following:

(1) electronic format which does not conform to our procedures in §91.62 of this title (relating to Electronic Procedures for Filing Open Meeting Documents), and

(2) filing procedures which do not conform to §91.66 of this title (relating to Procedures for Filing Open Meetings.)

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 21, 1998.

TRD-9814930

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 463-5561



1 TAC §91.28

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

The repeal is proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The proposal affects Government Code, Chapter 2002, Subchapter B, §2002.011. §91.28. Procedure for Filing Notice of Open Meeting.

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 21, 1998.

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Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 463-5561



Subchapter B. [Electronic] Filing Procedures

1 TAC §§91.61-91.63, 91.66

The amendments and new rules are proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The proposal affects Government Code, Chapter 2002, Subchapter B, §2002.011.

§91.61. *Electronic Procedures for Filing Rules and Miscellaneous Documents.*

(a) Submit documents in electronic format using one of the following methods: file transfer protocol (FTP), e-mail, or 3-1/2 inch diskettes. Submit files in the American Standard Code for

Information Interchange (ASCII) format. ASCII means standard keyboard characters limited to those represented by a decimal 32 (a space) to a decimal 126 (a tilde). Characters above 127 (extended characters) are not acceptable without our permission. Name files using the date (month and date only) of the submission followed by a decimal point and the agency code assigned by the Texas Register. If you submit more than one file on the same day, insert a letter in sequence after the date and before the decimal point. For example: 0715.004 indicates that this file was sent on July 15 by the Office of the Secretary of State; 0715a.004 and 0715b.004 indicate a second and third file were sent on the same day. If you are sending by e-mail, include the file name in the subject line. You may submit more than one document in an electronic file except that rules and miscellaneous documents must be submitted as separate files. If you include multiple submissions in an electronic file, insert the code *n (as defined in subsection (c)(10) of this section) between each submission. Include all appropriate language as required by §91.67 of this title (relating to Rule Submission Preambles) with each rule submission in the file.

(b)-(i) (No change.)

§91.62. Electronic Procedures for Filing Open Meeting Documents.

(a) Submit documents in electronic format using one of the following methods: Internet Web form, file transfer protocol (FTP), 3-1/2 inch diskette or by e-mail. Submit files in the American Standard Code for Information Interchange (ASCII) format. ASCII means standard keyboard characters limited to those represented by a decimal 32 (a space) to a decimal 126 (a tilde). Characters above 127 (extended characters) are not acceptable without our permission.

(b) Submitting open meetings using the Internet web form. Enter all required information into the Internet web form. Attach the agenda to the form before submitting or include the agenda as part of the form. Attached agendas will be in ASCII format.

(c) Submitting open meetings using FTP or 3-1/2 diskette.

(1) Send only one submission per file.

(2) Submit files in ASCII format.

(3) Format files according to the form at the end of this paragraph. Include all category designations. In the "date of submission" and "date of meeting" categories, enter the date in month/date/year order. Separate month, date, and year with slashes and use two digits for the month and date and four digits for the year, for example, 09/22/1998. The file will be rejected if it contains extraneous information.

Figure: 1 TAC §91.62(c)(3)

(4) Name files in this format: "MMDDOMAL.123". "MM" designates month. "DD" designates the filing date (not the date of the meeting). "OMA" designates the number of open meetings filed on this date. If there are several meetings, name them "OMA", "OMB", "OMC" and so on. "L" designates the liaison's I.D. number. "123" designates the three-digit agency code and is preceded by a decimal. For example "0903OMC1.004" indicates that the file was submitted on September 3. It is the third open meeting filed on this day from liaison number one at the Office of the Secretary of State.

(5) If submitting by FTP, use the required FTP address and the appropriate login and password as designated by the staff of the Texas Register.

(6) When submitting documents on diskette, format the diskette using DOS 3.1 or a newer version of the operating system. We accept high-density formatted diskettes. Diskettes must contain only the files being submitted. We will reject diskettes containing

files not related to the submission. We do not return diskettes to the issuing agency. You may request a diskette in exchange for the submitted diskette. Attach a label to the diskette identifying your agency.

(d) Submitting open meetings using e-mail.

(1) Send only one submission per e-mail.

(2) Send file to the required e-mail address as designated by the staff of the Texas Register.

(3) The e-mail subject line contains the name of the file in accordance with the requirements specified in subsection (c)(4) of this section.

(4) Open meetings will be attached to the e-mail in ASCII format. Exclude extraneous information from the body of the e-mail.

(5) Format files according to the example in subsection (c)(3) of this section. Include all category designations.

(e) Texas Register liaisons. Liaisons and their alternates will receive a liaison number and login and password for the web applications by the Texas Register.

(f) Acknowledgements and Rejections. The Register will acknowledge acceptance or rejection of an open meeting file by fax or e-mail within two hours of receipt in the Register office. If you do not receive an acknowledgement or rejection within two hours, contact the Texas Register office.

(g) Type of acknowledgement and rejection messages.

(1) An Acknowledgement of Receipt message may indicate that the submission has been accepted and posted to the Internet. The message gives the agency name, the board or committee holding the meeting, the time and date of the meeting and the TRD number.

(2) An Acknowledgement of Receipt message may indicate that the submission has been accepted and posted to the Internet but fails to meet the seven-day or 72-hour deadline. The message will give the agency name, the board or committee, the time and date of the meeting and the TRD number.

(3) A rejection message indicates that the file was not posted and gives the reason why. Reasons may include that the liaison name is not authorized, a liaison's ID is inactive, the meeting date is past, or the submission is incomplete.

(h) Submissions received by the Internet web form and by file transfer protocol (FTP) will be accepted 24 hours a day, seven days a week.

(i) Agency liaisons can cancel their open meetings using secure Internet access.

(j) Do not include any type of graphics.

(k) Do not submit an open meeting more than three months in advance of the meeting date.

(l) Include only one meeting per submission. If a meeting is to be held on consecutive days, submit each day as a separate open meeting file.

§91.63. Submission Forms.

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

(1) TR-1-rule review;

(2) TR-2—rule submissions;

~~(3) TR-3—open meeting submissions;~~

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

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

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

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

(d) List on the submission form the file name and means of transmission, i.e., diskette, file transfer protocol (FTP), ~~[internet, modem,]~~ or e-mail. See §91.61 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents).

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

§91.66. Procedures for Filing Open Meetings.

(a) Submit notices of open meetings to the Texas Register, Office of the Secretary of State, in accordance with the provisions of the Texas Open Meetings Law, Government Code, Chapter 551.

(b) An agency is not required by the Open Meetings Law to file and post a cancellation notice of a meeting which has previously been filed and posted. However, if the agency desires to notify the public that a meeting has been canceled, the agency can post a cancellation notice to the electronic version of the meeting on the Internet.

(c) The Texas Register, Office of the Secretary of State, interprets the seven-day posting requirement required by the Open Meetings Law to mean seven full 24-hour periods preceding the day of the meeting. In calculating the seven-day period, the first day is the first calendar day after the notice is posted. The day of posting and the day of the meeting are not included in calculating the seven-day period.

(d) Submit a rescheduled open meeting as if it were a new meeting.

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 21, 1998.

TRD-9814932

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 463-5561



Subchapter C. Miscellaneous

1 TAC §91.122

The amendment is proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The proposal affects Government Code, Chapter 2002, Subchapter B, §2002.011.

§91.122. Individual Copies.

Individual copies or ~~[diskettes]~~ electronic version of the Register, if available, will be sold for a price not to exceed the cost of publication and mailing. Current prices will be published in the Texas Register inside front cover.

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 21, 1998.

TRD-9814934

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 463-5561



Part XV. Texas Health and Human Services Commission

Chapter 351. Coordinated Planning and Delivery of Health and Human Services

1 TAC §351.11

The Health and Human Services Commission proposes new §351.11, concerning the quarterly reporting by the executive head of each health and human services agency to the governing body of that agency and to the Health and Human Services Commission on that agency's efforts to streamline and simplify the delivery of services. Subsection (a) of the new section, identifies the state health and human services agencies required to submit reports. The new subsection (b) sets forth the months in which the executive head of each agency must report, in writing, on the agency's efforts to streamline and simplify the delivery of services during the previous three months. A copy of each agency's quarterly report must be submitted to the Health and Human Services Commission. The new subsection (c) stipulates that the Health and Human Services Commission will define the information to be included in the report and the report format. It also provides examples of activities that may be considered to streamline and simplify the delivery of services.

Gary Bego, Chief Financial Officer, has determined that for the first five years this rule is in effect, no fiscal implications for state and local government are anticipated from the enforcement or administration of the rule.

Mr. Bego has also determined that for the first five years this rule is in effect the public benefit anticipated as a result of enforcing this rule will be greater public awareness of efforts to streamline and simplify the delivery of services to clients of health and human services. There is no anticipated economic cost to small businesses or persons required to comply with the proposed rule. There will be no impact on local employment.

Questions or comments by members of the public on the proposed rule are solicited. Written comments on the proposal should be submitted to Kay Ghahremani, Texas Health and Human Services Commission, P. O. Box 13247, Austin, Texas

78711, or by facsimile (FAX) to (512) 424-6588 within 30 days of publication of the proposal in the *Texas Register*.

This new rule is proposed under the Texas Government Code, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Commission's duties under Chapter 531, and under §531.0243, which governs reports on delivery of health and human services.

This new rule implements Government Code, §531.0243.

§351.11. Reports on Efforts to Streamline and Simplify Delivery of Services.

(a) Applicability. This section applies to state health and human services agencies as defined in §531.001(4), Government Code.

(b) Quarterly Reports.

(1) The executive head of each health and human services agency shall report quarterly to the governing body of the agency on the agency's efforts to streamline and simplify the delivery of services.

(2) The reports shall be presented at the governing body's regular meetings in March, June, September, and December for efforts during the previous three months. If the governing body of the agency does not hold a meeting in the designated month, then the report shall be presented at the next meeting after the designated month.

(3) Each agency shall submit a copy of the report to the Health and Human Services Commission within 15 days from the date the report was submitted to the agency's governing body.

(c) Report Content and Format.

(1) Information to be included in the report and the report format will be defined by the Health and Human Services Commission, and will include descriptions of activities that relate to streamlining and simplifying of the delivery of services.

(2) Activities that streamline and simplify the delivery of services may include, but are not limited to the following:

(A) consolidation, coordination, streamlining or simplification of administrative or support functions, including use of automation or the Internet;

(B) state/local collaborations or partnerships;

(C) coordination or collaboration initiatives with other state agencies;

(D) cost-efficiency or cost-effectiveness initiatives;

(E) efforts to streamline or simplify service delivery at one or more of the following stages:

(i) planning;

(ii) eligibility determination;

(iii) intake or enrollment;

(iv) outreach, marketing, or education;

(v) implementation;

(vi) case management or referral;

(vii) quality assurance; or

(viii) evaluation;

(F) other efforts that increase consumer satisfaction.

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 17, 1998.

TRD-9814782

Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Earliest possible date of adoption: November 1, 1998

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

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

10 TAC §§9.1, 9.5, 9.7, 9.9, 9.10, 9.11

The Texas Department of Housing and Community Affairs (TDHCA) proposes amendments to §§9.1, 9.5, 9.7, 9.9, 9.10, and 9.11 concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP). The amendments are being proposed to establish the standards and procedures by which TDHCA will allocate fiscal year 1998 disaster relief, disaster recovery initiative, economic development, colonia, housing and TCDP Small Town Environment Program funds. The amendments are being proposed to make changes to the application and selection criteria for the program fund categories.

Ruth Cedillo, director of the Texas Community Development Program, has determined that for the period that the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Cedillo also has determined that for the period that the sections are in effect, the public benefit as a result of enforcing the sections will be the equitable allocation of CDBG non-entitlement area funds and disaster recovery initiative funds to eligible units of general local government and eligible Indian tribes in Texas. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Anne Paddock (apaddock@tdhca.state.tx.us), Deputy General Counsel, Texas Department of Housing and Community Affairs, 507 Sabine, P.O. Box 13941, Austin, Texas 78711-3941.

The amendments are proposed under Texas Government Code, Chapter 2306, §2306.098, which provides TDHCA with the authority to allocate Community Development Block Grant non-entitlement area funds to eligible counties and municipalities according to department rules.

Texas Government Code, Chapter 2306, §2306.098 is not affected by the proposed amendments.

§9.1 General Provisions.

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

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the Texas Community Development Program. An exception to this requirement [The only exception] is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

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

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Department and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the Texas Capital Fund.

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

(5) A survey that was completed after January 1, 1989, or after January 1, 1990, for a previous Texas Community Development Program application may be accepted by the Department for a new application to the extent specified in the most recent application guide for the proposed project.

(l)-(m) (No change.)

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in Section 2 of such contract.

(1) Obligate at least 50% of the total funds awarded under a contract (except for Texas Capital Fund contracts, housing fund contracts, colonia self-help center contracts, and small towns environment program fund contracts) executed at least 12 months prior to the current program year application deadline. This paragraph does not apply to disaster relief fund applicants.

(2) Expend all but the reserved audit funds, or other reserved funds that are pre-approved by Texas Community Development Program staff, awarded under a contract (except for Texas Capital Fund contracts, colonia self-help center contracts, and small towns environment program fund contracts) executed at least 24 months prior to the current program year application deadline and submit to the Department a certificate of completion required by the most recent edition of the Texas Community Development Program Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by Texas Community Development Program staff. This paragraph does not apply to disaster relief fund applicants.

(3) (No change.)

(4) Expend all but the reserved audit funds or other reserved funds that are pre-approved by Texas Community Development Program staff, awarded under a contract (except for Texas Capital Fund contracts, colonia self-help center contracts, and colonia demonstration fund projects) with a contact period of 36 months and that has been in effect for at least 36 months prior to the current

program year application deadline, and submit to the Department a certificate of completion required by the most recent edition of the Texas Community Development Program Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by Texas Community Development Program staff. This paragraph does not apply to disaster relief fund applicants.

(o)-(p) (No change.)

§9.5 Disaster Relief Fund.

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

(c) Selection procedures. As soon as an area qualifies for disaster relief assistance, the Department works with the local government, the governor's office, and the Emergency Management Division of the Texas Department of Public Safety to determine where Texas Community Development Program funds can best be utilized. The Department then works with the unit of local government selected for funding to negotiate a contract. A unit of general local government cannot receive a disaster relief grant and an urgent need grant to address problems caused by the same natural disaster situation. In no instance will a unit of general local government receive more than one disaster relief grant to address a single occurrence of a natural disaster.

(d) Disaster recovery initiative funds. Disaster recovery initiative funds are available to eligible counties, cities, and Indian tribes to address damages from severe rain storms and flooding that occurred in June of 1997. The funds can only be used to address damages from the storms and flooding that occurred during June of 1997. Any damages sustained in the eligible county areas that were sustained from storm or flood conditions that occurred before or after June of 1997 are not eligible for assistance. Disaster recovery initiative funds may supplement, but not replace, resources received from other Federal or State agencies to address the damages from the June 1997 storm and flood conditions. These funds cannot be used for activities that were reimbursable by or for which funds were made available from the Federal Emergency Management Agency, the Small Business Administration, the National Resource Conservation Service, or the U.S. Army Corps of Engineers.

(e) Eligible applicants for disaster recovery initiative funds. Eligible applicants for these funds are nonentitlement and entitlement counties, incorporated cities, or eligible Indian tribes located in one of the counties named in the July 7, 1997, Presidential Disaster Declaration for counties in Texas that sustained damages from severe storms and flooding in June of 1997. The 21 counties included in this Disaster Declaration are: Bandera, Bexar, Blanco, Burnet, Comal, Eastland, Edwards, Gillespie, Goliad, Guadalupe, Hays, Kendall, Kerr, Kimble, Llano, Mason, Medina, Real, San Saba, Travis, and Uvalde.

(f) Eligible disaster recovery initiative activities. These funds may be used for a wide range of activities including:

(1) Acquisition, construction, reconstruction, or installation of public facilities and improvements.

(2) Acquisition of real property (including the buying out of properties in a flood plain and the acquisition of relocation property.

(3) Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations.

(4) Debris removal, clearance, and demolition.

(5) Rehabilitation or reconstruction of residential structures (for low and moderate income persons) and non-residential structures.

(6) Code enforcement in deteriorated or deteriorating areas, e.g., disaster areas.

(7) Assistance to facilitate homeownership among low and moderate income persons.

(8) Provision of public services (the TCDP cannot spend more than twenty-five percent of the disaster recovery initiative funds on public service activities).

(9) Activities relating to energy conservation and renewable energy resources, incorporated into recovery.

(10) Provision of assistance to profit-motivated businesses to carry out economic development or recovery activities that benefit the public through job creation/retention.

(11) Planning and administration costs (limited to sixteen percent of the total grant amount).

(12) Acquisition, construction, or reconstruction of buildings for the general conduct of government damaged or destroyed as a direct result of this Presidentially declared disaster.

(13) Construction of new replacement housing units (for persons of low and moderate income) by units of general local government damaged or destroyed as a direct result of this Presidentially declared disaster.

(14) Reimbursement for pre-award costs for eligible costs that occurred prior to the effective date of the TCDP contract agreement but occurred on or after the incident date of the Presidentially declared disaster.

(g) Disaster recovery initiative funding cycle. An application for these funds can be submitted on an as-needed basis. An eligible applicant can only submit one application for these funds. Based on the disaster recovery initiative selection criteria, applications selected to receive funding may not necessarily be selected on a first-come, first-served basis.

(h) Disaster recovery initiative selection criteria. The following describes the evaluation criteria used by the Department to select disaster recovery initiative grantees.

(1) Priority for the use of these funds will be given to applications where all or some of the application activities meet the national program objective of principally benefiting low and moderate income persons. To meet this national program objective at least fifty-one percent of the beneficiaries for an application activity must be low and moderate income persons.

(2) Priority for these funds will be given to eligible applicants that have not already received a Texas Community Development Program disaster relief grant for activities associated with the occurrence of this disaster.

(3) For any application that includes construction or acquisition activities, the Department will consider the applicant's status as a nonparticipating, noncompliant community under the National Flood Insurance Program when prioritizing the selection of the applicants that will receive disaster recovery initiative funds.

§9.7. Texas Capital Fund.

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

~~(c) Funding cycle. The Texas Capital Fund will be available three times annually for economic development funding to consider~~

~~projects that will create or retain permanent employment opportunities, primarily for low- and moderate-income persons. Real estate program or infrastructure program applications that meet the criteria for receiving amounts greater than the maximum grant amount can be submitted during time periods described in the application guidelines. Applications for the main street improvements program must be received by 5:00 p.m. on the date and location specified in the most recent application guide for this program.]~~

~~(c) [(d)] Selection procedures. The Texas Department of Economic Development will accept applications three times annually for the infrastructure and real estate program and once annually for the main street program. Applications are reviewed after they have been competitively scored. Texas Department of Economic Development staff will make recommendations to the executive director for final award. The application and selection procedures consist of the following steps:~~

~~(1) Each applicant must submit a complete application to the Texas Department of Economic Development's Business and Fiscal Services Division.~~

~~(2) In accordance with the selection criteria for the real estate program and infrastructure program, applications received under the real estate program and infrastructure program are evaluated and scored by Texas Department of Economic Development staff.~~

~~(3) Texas Department of Economic Development staff then review each application for eligibility and completeness in descending order based on the scoring. In those instances where the staff determines that the application is incomplete (evidenced by 13 or more inadequacies on the Application Checklist), the application will be returned to the applicant and may be submitted in the next funding cycle. Returned applications will not be considered for the current funding cycle. Applications resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given for applications previously submitted and not funded. In those instances where the staff determines that the application has 12 or less inadequacies on the Application Checklist, the applicant will be given ten business days to rectify all deficiencies. In the event staff determines that the application contains activities that are ineligible for funding, the application will be returned to the applicant. Staff then conducts a review of each complete application to make threshold determinations with respect to:~~

~~(A) the financial feasibility of the business to be assisted based on a credit analysis;~~

~~(B) the strength of commitments from all other public and/or private investments identified in the application;~~

~~(C) the ability of the applicant to operate or maintain any public facility or service assisted with Texas Community Development Program funds, if infrastructure improvements are requested;~~

~~(D) whether the use of Texas Capital Funds is appropriate to carry out the project proposed in the application;~~

~~(E) whether there is evidence that at least 51% of the permanent jobs created or retained will benefit low- and moderate-income persons;~~

~~(F) whether efforts have been made to maximize other financial resources; and~~

~~(G) a copy of a complete application must be provided to the appropriate Regional Review Committee. Proposals submitted for funding under the Texas Capital Fund require regional review~~

"from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the staff provided, such comments are received by the staff prior to the time that the staff makes a recommendation to the executive director of the Texas Department of Economic Development.

(4) Upon the Texas Department of Economic Development's determination that an application supports a feasible and eligible project, staff may schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official, or his designee, and business representative(s), and to visit the project site.

(5) Staff prepares a project report with recommendations for the executive director who makes the final award.

(6) Upon the executive director's selection, the projects selected for funding are announced by the Texas Department of Economic Development.

(7) Texas Department of Economic Development staff then negotiates the contract with the recipients. The contract terms are based on the information provided in the application, but the Texas Department of Economic Development may vary the terms of the contract with the recipient.

(d) [(e)] Selection criteria for the real estate and infrastructure programs of the Texas Capital Fund focus upon factors which may include, but which are not limited to, paragraphs (1)-(9) of this subsection. In addition to the selection criteria described in paragraphs (1)-(9) of this subsection, projects will be reviewed and evaluated upon the following additional factors: the history of the applicant community in the program; the strength of the business or marketing plan; the management experience of the business's principals; and the justification of the minimum Texas Capital Fund contribution necessary to serve the project:

- (1) Creation of jobs paying an above-average wage;
- (2) Generation of a greater ratio of private investment to Texas Capital Fund investment;
- (3) Expansion of markets through means such as exporting, value-added processing, and/or creating new or modified product lines;
- (4) Provision of job opportunities at the lowest possible Texas Capital Fund cost per job;
- (5) Benefit to areas of the state most in need of new capital investment and/or jobs;
- (6) Assistance for small businesses and manufacturers;
- (7) Feasibility of project and ability to create and/or retain jobs; and
- (8) Creation or retention of jobs primarily for low and moderate income persons.
- (9) Applications from communities designated as defense economic readjustment zones receive additional scoring consideration if at least fifty percent (50%) of the TCF funds will be expended for the direct benefit of the readjustment zone and the project will promote TCDP-eligible economic development in the community.

(e) [(f)] Additional criteria for the infrastructure program. A minimum of a ten percent equity injection, based on total project costs in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required. For infrastructure program awards in excess of \$750,000, assisted businesses are required to repay twenty-five percent of the award amount with no interest accruing. For infrastructure program railroad improvement awards, assisted businesses are required to make full repayment of the Texas Capital Fund financing with no interest accruing.

(f) [(g)] Additional criteria for the real estate program. A minimum of a ten percent equity injection, based on total project costs in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required if the business has been operating for at least three years. A minimum of a thirty-three percent equity injection, based on total project costs, in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required if the business has been operating for less than three years. For real estate development projects, assisted businesses are required to make full repayment of the Texas Capital Fund portion of the project financing with no interest accruing.

(g) [(h)] Selection criteria for the main street improvements program. Texas Department of Economic Development staff and staff from the Texas Historical Commission review and evaluate the applications. The selection criteria focus upon factors which may include, but which are not limited to, paragraphs (1)-(8) of this subsection. In addition to the selection criteria described in paragraphs (1)-(8) of this subsection, projects will be reviewed and evaluated upon the following additional factors: the history of the applicant community in the program; the strength of the marketing plan; and the justification of the minimum Texas Capital Fund contribution necessary to serve the project. The terms and criteria used in this subsection are further defined in the application guidelines for this program.

(1) Threshold criteria. In order for its application to be considered, an applicant must meet the requirements of either subparagraph (A) or (B), and (C) of this paragraph:

(A) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must;

(i) document that the project qualifies as slum or blighted on a spot basis under local law; and

(ii) describe the specific condition of blight or physical decay that is to be treated.

(B) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §9.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(C) Main street designation. The applicant must be [have been] designated by the Texas Historical Commission as a Main Street City [and must have received this designation two (2) years] prior to submitting a Texas Capital Fund application for main street improvements.

(2) Feasibility of the project.

(3) Creation of jobs paying an above-average wage.

(4) Generation of a greater ratio of private investment to Texas Capital Fund investment.

(5) Provision of job opportunities at the lowest possible Texas Capital Fund cost per job.

(6) Benefit to areas of the state most in need of new capital investment and/or jobs.

(7) Texas Historical Commission scoring.

(8) Community profile.

§9.9. *Colonia Fund.*

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

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

(3) Eligibility for the Department's colonia economically distressed areas program fund (colonia EDAP fund) is limited to counties, and nonentitlement cities located in those counties, that are eligible under the TCDP Colonia Fund and Texas Water Development Board's Economically Distressed Areas Program. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible cities that annexed the eligible colonia where improvements are to be made after January 1, 1993, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(b) Eligible activities. The only eligible activities under the colonia fund are:

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

(5) For the Department's colonia EDAP fund, eligible activities are limited to those that provide assistance to low and moderate income colonia residents that cannot afford the costs associated with connections and service to water or sewer systems funded through the Texas Water Development Board's Economically Distressed Areas Program. The eligible activities are water or sewer connection fees, water or sewer taps, water meters, water or sewer yard service lines, plumbing improvements associated with the provision of water or sewer service to an occupied housing unit, water or sewer house service connections, reasonable associated administrative costs, and reasonable associated engineering costs.

(c) Types of applications. Eligible applicants may submit one application for the colonia EDAP fund, the colonia construction fund and the colonia planning fund. Eligible planning activities cannot be included in an application for the colonia construction fund. Two separate fund categories are available under the colonia planning fund. The colonia area planning fund is available for eligible planning activities that are targeted to selected colonia areas. The colonia comprehensive planning fund is available for countywide comprehensive planning activities that include an

assessment and profiles of a county's colonia areas. Separate competitions are held for the colonia area planning fund and colonia comprehensive planning fund allocations. A county that has previously received a colonia comprehensive planning fund grant award from the Department may not submit another application for colonia comprehensive planning fund assistance.

(d) Funding cycle. The colonia construction fund and the colonia planning fund are allocated on an annual basis to eligible county applicants through competitions conducted during the program year. Applications for funding must be received by the Department by 5:00 p.m. on the dates specified in the most recent application guide for each separate colonia fund category. The colonia self-help centers fund is allocated on an annual basis to counties included in Subchapter Z, Chapter 2306, Section 2306.582, Government Code, and/or counties designated as economically distressed areas under Chapter 17, Water Code. The colonia EDAP fund is allocated on an annual basis and the funds are distributed on an as-needed basis.

(e) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction fund and the colonia planning fund. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program. Copies of the application must be provided to the applicant's regional planning commission and the Department.

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

(4) The Department then scores the colonia construction fund and colonia planning fund applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Department evaluates information in each application and other factors before the completion of a final technical review of each application.

(5)-(7) (No change.)

(f) Selection criteria (colonia construction fund). The following is an outline of the selection criteria used by the Department for scoring colonia construction fund applications. Four hundred forty points are available.

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

(3) Project priorities (total-195 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the Texas Community Development Program funds requested minus the Texas Community Development Program funds requested for engineering and administration, a percentage of the total Texas Community Development Program construction dollars for each activity is calculated. The percentage of the total Texas Community Development Program construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

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

(C) installation of approved residential on-site wastewater disposal systems-110

(D) ~~[(C)]~~ expansion or improvement of existing water and/or sewer service—95

(E) ~~[(D)]~~ street paving and drainage activities—75

(F) ~~[(E)]~~ all other eligible activities—20

(4) Project design (total—135 [95] points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. Each application is scored by a committee composed of Texas Community Development Program staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need(additional consideration is given to water activities addressing impacts from drought conditions);

(B) (No change.)

(C) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TCDP community development fund or through community development block grant entitlement funds;

~~[(C) whether the applicant has adopted and enforced subdivision regulations or subdivision orders (counties that have adopted and enforced the Model Subdivision Rules established pursuant to Section 16.343 of the Water Code receive additional consideration);]~~

(D)-(G) (No change.)

(H) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(I) [(H)] whether the applicant's proposed use of Texas Community Development Program funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program; and

(J) [(H)] whether the applicant provides any local matching funds for project activities.

(g) Selection criteria (colonia area planning fund). The following is an outline of the selection criteria used by the Department for scoring applications for eligible planning activities under this fund. Three hundred fifty points are available.

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

(3) Project design (total—250 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. Each application is scored by a committee composed of Texas Community Development Program staff using the following information submitted in the application:

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

(E) the extent to which any previous planning efforts for colonia areas have been accomplished [implemented];

(F) (No change.)

~~[(G) whether the applicant has adopted and enforced subdivision regulations or orders (counties that have adopted and~~

~~enforced the Model Subdivision Rules established pursuant to Section 16.343 of the Water Code receive additional consideration);]~~

(G) [(H)] the availability of grant funds to the applicant for project financing from other sources;

(H) [(H)] whether the applicant provides any local matching funds for project activities; and

(I) [(J)] the applicant's past performance on prior Texas Community Development Program contracts.

(h) Selection criteria (colonia comprehensive planning fund). The following is an outline of the selection criteria used by the Department for scoring applications for eligible planning activities under this fund. Two hundred points are available.

(1) (No change.)

(2) Project design (total—175 points). Each application is scored by a committee composed of Department staff using the following information submitted in the application:

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

~~[(D) whether the applicant has adopted and enforced subdivision regulations or orders (counties that have adopted and enforced the Model Subdivision Rules established pursuant to Section 16.343 of the Water Code receive additional consideration); and]~~

(D) [(E)] the applicant's past performance on previously awarded Texas Community Development Program contracts.

(i) Program guidelines (colonia self-help centers fund). The following is an outline of the administrative requirements and eligible activities under this fund.

(1) (No change.)

(2) The Department's grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority. ~~[(the Texas State Affordable Housing Corporation, a non-profit 501 (c)(4) corporation. The Texas State Affordable Housing Corporation provides the necessary technical oversight to ensure that colonia self-help center activities comply with program requirements and the provisions of Subchapter Z, Chapter 2306, Government Code.)]~~

(3) (No change.)

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A)-(H) (No change.)

(I) monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(J) [(H)] providing other eligible services that the self-help center, with Department approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area; and

(K) [(J)] providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title

to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract.

(5) (No change.)

(j) Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by a committee composed of Department staff.

(1) The proposed use of the colonia EDAP funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the Texas Water Development Board Economically Distressed Area Program.

(2) The ability of the applicant to utilize the grant funds in a timely manner.

(3) The availability of grant funds to the applicant for project financing from other sources.

(4) The applicant's past performance on previously awarded TCDP contracts.

§9.10. *Housing Fund.*

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

(c) Funding cycle (housing demonstration fund). This fund is allocated on an annual basis to eligible units of general local government through a direct award basis. Applications for funding must be received by the Texas Community Development Program by the application deadline date or dates specified in the application guide for this fund. [~~Applications for the 1997 program year housing infrastructure fund will not be accepted if a sufficient number of eligible 1996 program year housing demonstration fund applications are submitted to utilize the combined amount of funds available through the 1996 housing demonstration fund and the 1997 housing infrastructure fund allocations.~~]

(d) Eligible activities (housing rehabilitation fund). Housing units rehabilitated under this fund must be brought up to HUD Section 8 Existing Housing Quality Standards or local housing codes. The only eligible activities under the housing rehabilitation fund are:

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

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

§9.11. *Small Towns Environment Program Fund.*

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program. The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

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

(3) Cities and counties receiving 1997 or 1998 community development fund grant awards for applications that do not include water, sewer, or housing activities are not eligible to receive a 1998

grant award from this fund. However, the Department may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 1997 or 1998 community development fund grant award to finance water and sewer activities that will be addressed through self-help methods.

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

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

Filed with the Office of the Secretary of State, on September 15, 1998.

TRD-9814545

Daisy Stiner

Acting Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 475-3726

◆ ◆ ◆
TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 74. Curriculum Requirements

Subchapter B. Graduation Requirements

19 TAC §§74.11-74.13

The Texas Education Agency (TEA) proposes amendments to §§74.11-74.13, concerning graduation requirements. The proposed amendments would add Agricultural Communications to the list of courses that may be taken to meet the one-half credit requirement for speech in the minimum, recommended, and distinguished achievement programs.

Currently, there are five courses from 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading, that are approved to meet the graduation requirement in speech for all three high school graduation plans. These five courses are Communication Applications, Speech Communication, Public Speaking, Debate, and Oral Interpretation, which are part of the foundation curriculum. The proposed Agricultural Communications course is found in the enrichment curriculum. The Texas Essential Knowledge and Skills (TEKS) in foundation curriculum courses are required by statute to be taught. The TEKS for enrichment curriculum courses are to be used as guidelines by local school districts in providing instruction. The proposed amendments would also add language stating that all essential knowledge and skills for courses used to meet the speech requirement must be taught.

Effective with students entering Grade 9 in the 2001-2002 school year, it is anticipated that the Communication Applications course will be the only course that can fulfill the one-half credit in speech requirement. At that time, it is anticipated that school districts will have new instructional materials specifically adopted for the Communication Applications course available for student and teacher use.

Mr. Felipe Alanis, deputy commissioner for programs and instruction, 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. However, if the Agricultural Communications course is added to the list of courses approved to meet the requirement for one-half credit in speech, as proposed, then the overall enrollment in Career and Technology Education courses could increase. This would cause an increase in state funding to schools because funding is weighted for Career and Technology Education classes. Since there are five other subject areas that can be used to satisfy the speech requirement, the proposed amendments are not expected to significantly increase enrollment in the Agricultural Communications course.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of an additional option to students to satisfy the one-half credit speech requirement for graduation. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted in writing to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to rules@tmail.tea.state.tx.us or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §28.002 and §28.025, which authorizes the State Board of Education to establish curriculum graduation requirements.

The proposed amendments implement the Texas Education Code, §28.002 and §28.025.

§74.11. *High School Graduation Requirements.*

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

(d) A student must complete at least 22 credits to receive a minimum high school program diploma. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (Credit by Examination). College Board Advanced Placement and International Baccalaureate courses may be substituted for requirements in appropriate areas. A student must demonstrate proficiency in the following.

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

(9) Speech - one-half credit in Communication Applications, Speech Communication, Public Speaking, Debate, [œ] Oral Interpretation, or Agricultural Communications. To meet the provisions of this paragraph, all essential knowledge and skills for a course listed in this paragraph must be taught.

(10)-(11) (No change.)

(e)-(h) (No change.)

§74.12. *Recommended High School Program.*

(a) (No change.)

(b) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate areas. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (Credit by

Examination). The student must demonstrate proficiency in the following.

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

(11) Speech - one-half credit in Communication Applications, Speech Communication, Public Speaking, Debate, [œ] Oral Interpretation, or Agricultural Communications. To meet the provisions of this paragraph, all essential knowledge and skills for a course listed in this paragraph must be taught.

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

§74.13. *Distinguished Achievement Program – Advanced High School Program.*

(a) Beginning in the 1999-2000 school year, a student who wishes to complete an advanced high school program (called the distinguished achievement program) and have the accomplishment recognized and distinguished on the academic achievement record (transcript) must complete the following requirements.

(1) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate areas. The student must demonstrate proficiency in the following.

(A)-(J) (No change.)

(K) Speech - one-half credit in Communication Applications, Speech Communication, Public Speaking, Debate, [œ] Oral Interpretation, or Agricultural Communications. To meet the provisions of this paragraph, all essential knowledge and skills for a course listed in this paragraph must be taught.

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

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

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

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

TRD-9814889

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: November 1, 1998

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



Chapter 89. Adaptations for Special Populations

Subchapter E. Migrant Education Program

19 TAC §89.71

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

The Texas Education Agency (TEA) proposes the repeal of §89.71, concerning the migrant education parent advisory council. The section establishes requirements and procedures for the State Parent Advisory Council for Migrant Education. The proposed repeal is necessary since the appointment of the State Parent Advisory Council for Migrant Education is authorized by the Texas Education Code (TEC), §7.055(b)(11), which

allows the commissioner of education to appoint advisory committees. The State Parent Advisory Council for Migrant Education is currently authorized in 19 TAC §161.1003, Advisory Committees.

The Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, Part C, §1304(c)(3), requires the state and all local operating agencies receiving Title I Part C Migrant funds to carry out appropriate consultation with migrant parent advisory councils. To comply with this provision, the commissioner of education appoints a State Parent Advisory Council for Migrant Education to advise the TEA in planning, implementing, and evaluating the state migrant education program.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a Texas migrant education program designed and implemented, in consultation with the State Parent Advisory Council for Migrant Education, to provide a comprehensive instructional and support services program that effectively meets the needs of migrant children. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to rules@tmail.tea.state.tx.us or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed under Texas Education Code, §7.055(b)(11), which allows the commissioner of education to appoint advisory committees; Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, Part C, §1304(c)(3), which requires the state and all local operating agencies receiving Title I Part C Migrant funds to carry out appropriate consultation with migrant parent advisory councils; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Section 167, which establishes a four-year sunset review cycle for all state agency rules.

The repeal implements Texas Education Code, §7.055(b)(11); Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, Part C, §1304(c)(3); and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Section 167.

§89.71. *State Parent Advisory Council for Migrant Education.*

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 21, 1998.

TRD-9814890

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: November 1, 1998

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

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TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 73. Licenses and Renewals

22 TAC §73.7

The Texas Board of Chiropractic Examiners proposes new §73.7, concerning approval of sponsors of continuing education courses and the courses themselves. The Texas Chiropractic Act, Texas Civil Statutes, Article 4512b §8b(c) requires the board to establish a continuing education program for licensed chiropractors. By rule, the board must develop a process to evaluate and approve continuing education courses. This proposal sets out the board's current guidelines for sponsors and prescribes the application process for board approval for courses and sponsors, approved sponsors, criteria for approved courses, including quality of content and presenters, approved topics, sponsor responsibilities, including verification of attendance and record keeping, periodic board evaluation of sponsors and courses, and approval revocation for failure to comply with board requirements. The proposal also changes the current annual \$100 fee per sponsor for processing applications to \$25 per course. Section 75.7 which sets out the board's fee schedule, is proposed for amendment, simultaneously with this rulemaking to reflect this change in fee. The board proposes this change in the fee from a sponsor basis to a course basis, because it more accurately reflects the source of the administrative costs of this program, that is, the actual time and expense for processing each application. The board by the Chiropractic Act is charged with setting reasonable and necessary fees sufficient to defray the costs of administering the various programs required under the Act. The current sponsor basis does not take into account the actual amount of work and cost to the agency of processing an application for each course. More time and expense will be incurred for sponsors with more than one course and less time for sponsors with fewer courses. It makes more sense to compute the fee necessary for this program based on the processing of each application for each course.

Joyce Kershner, Director of Licensure, has determined that for the first five-year period the proposed rule is in effect, except for the fee change, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as proposed. With regard to the fee change, the fiscal implication for the state is an estimated increase in revenue. In FY97, registration of continuing education sponsors and courses provided approximately \$2100 in revenue from 680 applications. Assuming the same number of applications for the first five years after adoption of the rule, the yearly revenue is estimated to be \$17,000.

Ms. Kershner also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the new rule will be that sponsors and licensees are provided better notice of the board's requirements and process for approving sponsors and continuing education courses, that the board will be able to recoup its costs for administering the course evaluation and approval function of its continuing education program, and that those who must pay the fee are charged a reasonable fee necessary to defray the cost of this program. There will be no added effect on small businesses versus that on larger businesses. Depending on the number of courses a sponsor conducts each year, a sponsor may experience either an increase or decrease in its annual registration fees. The anticipated economic cost to entities who are required to comply with the new rule will depend on the number of courses conducted each year.

Comments on the proposal may be submitted, no later than 30 days from the date of this publication, to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The new rule is proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, §8b, which authorize the board to adopt rules to develop a process to evaluate and approve continuing education courses, and §11, which authorize the board to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Chiropractic Act, including this part of its continuing education program.

The following are the statutes, articles, or codes affected by the proposed rule: §73.7 - Texas Civil Statutes, Article 4512b, §§4(c), 4a, 8b, 11.

§73.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide or national professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course and must include the course title, subject and description, the number of credit hours, the date, time and location of the course, and the names and backgrounds of speakers or instructors, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor. Each continuing education course shall be approved for one calendar year only. The number of hours of credit to be earned at a course may not be changed after an application has been submitted to the board.

(c) Application deadline and fee. A sponsor may submit an application no later than 100 days prior to the date of the course, along with a nonrefundable application fee of \$25 for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all course offered by the sponsor for which board approval is requested will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (i) of this section.

(e) Rejection. The board will notify, in writing, a sponsor of any rejection.

(f) Approved list of courses. The board will maintain a list of approved courses for compliance with §73.3 of this title (relating to Continuing Education) by licensees. One copy of the list will be provided to a licensee, without charge, upon request.

(g) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency;

(3) be on a topic from one or more of the following categories:

- (A) general or spinal anatomy;
- (B) neuro-muscular-skeletal diagnosis;
- (C) radiology or radiographic interpretation;
- (D) pathology;
- (E) public health;
- (F) chiropractic adjusting techniques;
- (G) chiropractic philosophy;
- (H) risk management;
- (I) physiology;
- (J) microbiology;
- (K) hygiene and sanitation;
- (L) biochemistry;
- (M) neurology;
- (N) orthopedics;
- (O) jurisprudence;
- (P) nutrition;
- (Q) adjunctive or supportive therapy;
- (R) boundary (sexual) issues;
- (S) insurance reporting procedures;
- (T) chiropractic research;
- (U) HIV prevention and education;
- (V) acupuncture.

(h) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(i) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) prepare a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course;

(5) provide the activity rosters and any other additional information about a course to the board upon request; and

(6) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(j) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

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

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

TRD-9814882

Gary K. Cain, Ed.D.

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-6709



Chapter 75. Rules of Practice

22 TAC §75.7

The Texas Board of Chiropractic Examiners proposes an amendment to §75.7(a), concerning fees and charges for public information. Under the proposal, the current fee schedule in §75.7(a) is amended to change the application fee for registering continuing education courses from a \$100 per year for each sponsor to \$25 per year for each course. The board proposes this change in the fee from a sponsor basis to a course basis, because it more accurately reflects the source of the administrative costs of this program, that is, the actual time and expense for processing each application. The board by the Chiropractic Act is charged with setting reasonable and necessary fees sufficient to defray the costs of administering the various programs required under the Act. The current sponsor basis does not take into account the actual amount of work and cost to the agency of processing an application for each course. More time and expense will be incurred for

sponsors with more than one course and less time for sponsors with fewer courses. It makes more sense to compute the fee necessary for this program based on the processing of each application for each course.

Joyce Kershner, Director of Licensure, has determined that for the first five-year period the rule as amended is in effect, there will be some fiscal implications for the state but none for local government as a result of enforcing or administering the rule. In FY97, registration of continuing education sponsors and courses has provided for approximately \$2100 in revenue from 680 applications. Assuming the same number of applications for the first five years after adoption of the amendment, the yearly revenue is estimated to be \$17,000.

Ms. Kershner also has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the section as amended will be to ensure the board is able to recoup its costs for administering its continuing education course evaluation and approval program and that those who must pay the fee are charged a reasonable fee necessary to defray the cost of this program. There will be no added effect on small businesses versus that on larger businesses. Depending on the number of courses a sponsor conducts each year, a sponsor may experience either an increase or decrease in its annual registration fees. Similarly, the anticipated economic cost to persons who are required to comply with the amended rule will depend on the number of courses conducted each year.

Comments on the proposal may be submitted, no later than 30 days from the date of this publication, to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, §8b, which authorize the board to adopt rules to develop a process to evaluate and approve continuing education courses, and §11, which authorize the board to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Chiropractic Act, including this part of its continuing education program.

The following are the statutes, articles, or codes affected by the proposed amendment: §75.7 - Texas Civil Statutes, Article 4512b, §§4(c), 4a, 8b, 11.

§75.7. Fees and Charges for Public Information.

(a) Current fees required by the board are listed in the following fee schedule table:

Figure: 22 TAC §75.7(a)

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

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

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

TRD-9814883

Gary K. Cain, Ed.D.

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-6709



Chapter 79. Provisional Licensure

22 TAC §79.1, §79.3

The Texas Board of Chiropractic Examiners proposes an amendment to §79.1(a)(2) and new §79.3, concerning provisional licensure. The Chiropractic Act, Texas Civil Statutes, Article 4512b §9(a)(2) requires an applicant for a provisional license to have passed a national or other examination recognized by the board relating to chiropractic. Section 79.1(a)(2) presently recognizes only Parts I, II, III and physiotherapy of the National Board of Chiropractic Examiners Examination in satisfaction of this statutory requirement. The board proposes to recognize the National Board of Chiropractic Examiners SPEC Examination or Parts I, II, III and physiotherapy. The board also proposes to add new §79.3, setting out that the board may refuse to issue a provisional or regular license, under §9 of the Chiropractic Act, if an applicant has a criminal conviction, as provided in Texas Civil Statutes, Articles 6252-13c and 6252-13d.

Joyce Kershner, Director of Licensure, has determined that for the first five-year period the amendment and new rule are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Kershner also has determined that for each year of the first five years the amendment and new rule are in effect, the public benefit anticipated as a result of enforcing the sections will be continued assurance that only qualified persons are licensed to practice in this state, while at the same time providing licensure to out-of-state chiropractors who are currently in good standing in another jurisdiction and are otherwise qualified for provisional licensure, but were licensed prior to the time the national examination was offered. There will be no effect on small businesses, or anticipated economic cost to persons who are required to comply with the amendment and new rule as proposed, other than the cost of the SPEC test. Under current rules, persons applying for provisional license must pay for any required examinations. It is their option which test they choose to submit in compliance with the rule as proposed for amendment.

Comments on the proposal may be submitted, no later than 30 days from the date of this publication, to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment and new rule are proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and §9, which authorize the board to grant a provisional license to eligible applicants and to determine which examinations it will recognize as a requirement for a provisional license, and Texas Civil Statutes, Articles 6252-13c and 6252-13d, which requires the board to consider the criminal history of an applicant for licensure.

The following are the statutes, articles, or codes affected by the proposed amendment and new rule:

§79.1 - Texas Civil Statutes, Article 4512b, §4(c), 4a, 9.

§79.3 - Texas Civil Statutes, Article 4512b, §4(c), 4a, 9, Texas Civil Statutes, Articles 6252-13c and 6252-13d.

§79.1. General Requirements for Provisional Licensure.

(a) An individual may apply for a provisional license under the following circumstances:

(1) (No change.)

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Part I, II, III, and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

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

(b)-(h) (No change.)

§79.3. Criminal Convictions.

The board may refuse to issue a license under Texas Civil Statutes, Article 4512b §9 and §79.1 of this title (relating to General Requirements for Provisional Licensure) if an applicant has been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a chiropractor in accordance with Texas Civil Statutes, Articles 6252-13c and 6252-13d.

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 21, 1998.

TRD-9814884

Gary K. Cain, Ed.D.

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-6709



Part XVII. Texas State Board of Plumbing Examiners

Chapter 363. Examinations

22 TAC §§363.1, 363.6, .363.9

The Texas State Board of Plumbing Examiners proposes amendments to §§363.1, 363.6, and 363.9, concerning examinations.

Section 363.1 specifies the requirements for all examinations. The proposed amendment changes the experience at the trade requirements from 8,000 hours to 6,000 hours for journeyman plumber examination applicants and removes the experience at the trade requirements for the plumbing inspector examination applicants. To protect the health of the public, all applicants must still take a rigorous examination to demonstrate their qualifications to engage in plumbing installations or plumbing inspections.

Section 363.6 allows the Board to conduct examinations for individuals that need special examination accommodations due to a disability. The amendment provides for a separate application that specifies the disability and justifies the request

for accommodation. The application will assist the Board in ensuring fair treatment to all applicants.

Section 363.9 specifies the requirements for reexamination after failure of an examination. The proposed amendment would allow an applicant that failed only one part of a multiple part examination, but passed all other parts of that examination, to retake only the part that the applicant failed. The amendment specifies that if more than one part of an examination is failed, the entire examination must be retaken. The amendment would also shorten the training period for any applicant that desires to retake an examination, in part or in its' entirety, after failure.

James Fowler, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period §363.1 is in effect there will be no effect to state government as a result of enforcing the rule. Local government will benefit by having a larger population to choose from when considering employment of a licensed plumbing inspector. The first five-year period §363.6 is in effect the Board may receive two applications for nonstandard testing accommodations per year. It is estimated that the cost to the Board to provide those accommodations would be approximately \$1,300 per year, or \$6,500 for the first five years that the rule is in effect, based on an estimate of applicants that would be visually and/or hearing impaired and/or have a specific learning disability. Mr. Fowler has determined that there would be no additional cost associated with providing accommodations for mobility disability, since the Board's facilities are currently accessible for those with mobility disabilities. Mr. Fowler has determined that, for the first five years that the rule is in effect, there will be no effect to local government as a result of enforcing the rule. The first five-year period §363.9 is in effect there will be no effect on local government as a result of enforcing the rule. Mr. Fowler has determined that there will be an estimated one-time cost of \$3,400, to the Board for necessary programming changes to the computer program that tracks examination scheduling and examination results. The estimated cost is based on 68 hours of programmer labor at the rate of \$50 per hour.

Mr. Fowler has determined that each year of the first five years §363.1 is in effect the public benefit will be to those individuals and their employers that will qualify for the journeyman plumber and plumbing inspector examinations sooner. The effect on small plumbing businesses will be that less training will be required for an employee to be eligible to take the journeyman plumber examination. There is no economic cost, but rather a cost savings to the persons having to comply with the rule as proposed. Individuals that desire to be licensed as journeyman plumbers or plumbing inspectors, as well as their employers, will spend less time and money for training those individuals. An additional benefit to plumbing businesses will be the resulting larger number of licensed plumbers available in the workforce. The first five years §363.6 is in effect the public benefit will be to those applicants with disabilities that require special accommodations. There will be no effect on small businesses. There is no economic cost to the persons having to comply with the rule as proposed. The first five years §363.9 is in effect the public benefit will be that the Board will be able to examine more individuals per year. The result will be more licensed plumbers will be available to protect the health and safety of the citizens of the State. Small and large plumbing businesses will benefit by having a larger number of licensed plumbers available in the workforce. There is no economic cost to the persons having to comply with the rule as proposed.

Comments on the proposed rule changes may be submitted to Gilbert Kissling, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas, 78765-4200.

The amendments are proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101, ("Act"), §5(a), §8, (Vernon Supp. 1998) and the rule it amends. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 8 of the Act directs the Board to administer a uniform and reasonable examination to determine the fitness, competency and qualifications of persons to engage in the business, trade or calling of a master or journeyman plumber or plumbing inspector.

No other statute, article, or code is affected by these proposed amendments.

§363.1. Qualifications.

- (a) (No change.)
- (b) Journeyman Plumber. Each applicant must:

- (1) (No change.)

- (2) have either of the following listed in subparagraphs (A)-(B) of this paragraph:

- (A) registration as a registered plumbing apprentice and at least 6,000 [8,000] hours of experience working at the trade or such work experience and technical training combined to equal 6,000 [8,000] hours, as verified by former employers; or

- (B) (No change.)

- (c) Plumbing Inspector. Each applicant must:

- (1) (No change.)

- (2) have one of the following listed in subparagraphs (A)-(C) of this paragraph:

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

- (C) successful completion of the International Association of Plumbing and Mechanical Officials (IAPMO), International Conference of Building Officials (ICBO), or Southern Building Code Congress International (SBCCI) certification [~~and 5,000 hours of experience working at the trade or such work experience and technical training combined to equal 5,000 hours as verified by former employers].~~

§363.6. Special Examination Conditions.

The board, on request, may conduct examinations with special accommodations for individuals who have a disability. All individuals who wish to take an examination with special accommodations must complete the application for non-standard testing accommodations. The board shall reserve the right to make all final decisions regarding accommodations and it may require a consultation by experts for a second opinion, if it determines that it is necessary for a particular applicant [for the hearing impaired, or for those with other disabilities, depending upon the special circumstances of the applicant].

§363.9. Reexamination.

- (a) Any applicant that fails only one part of a multiple part examination and passes all other parts of the same examination may schedule to retake the one part that was failed, without having to retake the entire examination (subject to the following conditions listed in paragraphs (1)-(4) of this subsection):

- (1) A passing score is a score of at least 70 points;

(2) A failing score is a score of 69.9 points or less;

(3) A time limit of three hours is allotted for reexamination of the one failed part;

(4) The full examination fee must be submitted with the application for reexamination.

(b) Any applicant that fails more than one part of a multiple part examination must schedule to retake the entire examination.

(c) In cases of examination failure (all or part), the board shall require the following listed in paragraphs (1)-(3) of this subsection before the applicant retakes a regularly scheduled examination:

(1) First failure: a 30 [90]-day training period.

(2) Second [and subsequent] failure [failures]: a 60 [180]-day training period.

(3) Third and subsequent failures: a 90-day training period.

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

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

TRD-9814892

Robert L. Maxwell

Chief of Field Services/Investigations

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 458-2145



Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Subchapter C. Professional Standards

22 TAC §501.24

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.24, concerning Other Professional Standards.

The proposed amendment to §501.24 allows for a better understanding of which standards the Board considers to be professional and authoritative standards. The Board intends for this rule to be interpreted as being applicable to present and all future pronouncements on these subjects by the American Institute of Certified Public Accountants (AICPA).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule does not require any additional action by anyone.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the

amendment will be zero because the rule does not require any additional action by anyone; and

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any additional action by anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that a better understanding of which standards the Board considers to be professional and authoritative standards. The probable economic cost to persons required to comply with the amendment will be a better understanding of which standards the Board considers to be professional and authoritative standards.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule does not require any additional action by anyone. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other statute, code or article is affected by this proposed amendment.

§501.24. Other Professional Standards.

A certificate or registration holder in the performance of consulting [management advisory] services, [or] accounting and review services, or any other attest service shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be defined by :

(1) Statements [statements] on Standards on Consulting Services (SSCS) issued by the American Institute of Certified Public Accountants; [management advisory services and]

(2) Statements on Standards for Accounting and Review Services (SSARS) [statements on standards for accounting and review services, respectively; in each instance] issued by the American Institute of Certified Public Accountants;[;]

(3) Statements on Standards for Attestation Engagements (SSAE) issued by the American Institute of Certified Public Accountants; or

(4) [~~and by~~] similar pronouncements by other entities having similar generally recognized authority.

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 21, 1998.

TRD-9814915

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-7848



Chapter 511. Certification as CPA

Subchapter H. Certification

22 TAC §511.161

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.161, concerning Qualifications for Issuance of a Certificate.

The proposed amendment to §511.161 allows the Board to require applicants for licensure to complete a four-hour ethics course as a condition for licensure and clarifies that the examination on the Board's rules is a written examination.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule does not require any state or local government action.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any state or local government action; and

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any state or local government action.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be new CPAs who are familiar with the Board's rules and professional ethics. The probable economic cost to persons required to comply with the amendment will be \$45 to \$75. The cost of a four-hour ethics course varies per ethics course vendor and whether one is or is not a member of the organization that is presenting the ethics course. This cost does not include the cost of travel or overnight stays because these are currently inapplicable.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, § 2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, § 6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other statute, code or article is affected by this proposed amendment.

§ 511.161. *Qualifications for Issuance of a Certificate.*

The certificate of a certified public accountant shall be granted by the board to any individual who qualifies under the current Act and has met the following qualifications:

(1)-(7) (No change.)

(8) must complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board approved provider of continuing professional education;

(9) must successfully complete the written [~~an~~] examination on the Rules of Professional Conduct promulgated by the board; and

(10) must provide any other information requested by 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.

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

TRD-9814916

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-7848



22 TAC §511.163

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.163, concerning Examination of the Rules of Professional Conduct.

The proposed amendment to §511.163 allows the Board to require applicants for licensure to complete a four-hour ethics course as a condition for licensure and clarifies that the examination on the Board's rules is a written examination.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule does not require any state or local government action;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any state or local government action; and

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any state or local government action.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be new CPAs who are familiar with the Board's rules and professional ethics. The probable economic cost to persons required to comply with the amendment will be \$45 to \$75. The cost of a four-hour ethics course varies per ethics course vendor and whether one is or is not a member of an organization providing the ethics course. This cost does not include the cost of travel or overnight stays because these are not applicable.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other statute, code or article is affected by this proposed amendment.

§ 511.163. *Examination of the Rules of Professional Conduct.*

(a) Candidates applying for the issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board-approved and registered provider of continuing professional education.

(b) Candidates applying for the issuance of the CPA certificate must also pass an examination on the rules of professional conduct promulgated by the board.

(c) ~~[(b)]~~ The examination must be completed not more than six months prior to the issuance of the CPA certificate.

(d) ~~[(c)]~~ A grade of 85% must be scored on the exam in order to be considered passing.

(1) If a grade of 85% is not scored on the exam, the candidate will be sent another exam.

(2) Failure to score at least 85% on the re-exam test would prevent the candidate from taking the exam for six months. Failure to again score less than 85% would continue the cycle.

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 21, 1998.

TRD-9814917

William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Chapter 519. Practice and Procedure

22 TAC §519.1-519.9, 519.11, 519.12, 519.17-519.29, 519.32-519.47

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of rules §§519.1-519.9, 519.11, 519.12, 519.17-519.29, and 519.32-519.47, concerning Practice and Procedure.

The proposed repeals will remove the Board's procedure rules which were superseded by the procedural rules adopted by the State Office of Administrative Hearing (SOAH).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the repeal requires no action or non action by anyone.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the Board's procedural rules have been replaced by SOAH's procedural rules.

C. The estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule will be zero because the Board's procedural rules have been replaced by SOAH's procedural rules and neither set of procedural rules affect revenue.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of the repeal will be SOAH's use of one uniform set of procedural rules for most of its administrative hearings.

The probable economic cost to persons required to comply with the repeal will be zero because those persons who used to comply with the Board's rules will now comply with SOAH's rules.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeals will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the transfer from one set of procedural rules to another very similar set of procedural rules should cause little or no additional economic effect. The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is proposed; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The proposed repeals are proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act, and section 2003.050 of the Government Code which requires the Chief Administrative Law Judge to adopt rules that govern hearings conducted by SOAH.

No other article, statute or code is affected by these proposed repeals.

§519.1. *Filing of Documents.*

§ 519.2. *Computation of Time.*

§519.3. *Extensions.*

§519.4. *Agreements to be in Writing.*

§ 519.5. *Rulemaking Proceedings.*

§519.6. *Service in Nonrulemaking Proceedings.*

§ 519.7. *Conduct and Decorum.*

§519.8. *Classification of Parties.*

§519.9. *Appearances in Person or by Representative.*

§519.11. *Form and Content of Pleadings.*

§519.12. *Examination by the Executive Director.*

§ 519.17. *Motions.*

§519.18. *Place and Nature of Hearings.*

§519.19. *Order of Procedure.*

§519.20. *Reporters and Transcript.*

§ 519.21. *Formal Exceptions.*

§519.22. *Dismissal Without Hearing.*

§519.23. *The Record and Assessment of Cost of Preparation.*

§519.24. *Show Cause Orders and Complaints.*

§519.25. *Ex Parte Consultation.*

§519.26. *Informal Conferences.*

§519.27. *Hearings in Disciplinary Actions.*

§519.28. *Follow-Up.*

§519.29. *Publication of Disciplinary/Administrative Sanctions.*

§519.32. *Prefiled Testimony and Objections.*

§ 519.33. *Supplementing Prefiled Testimony and Objections.*

§519.34. *Forms and Scope of Discovery; Protective Orders; Supplementation of Responses.*

§519.35. *Stipulations Regarding Discovery Procedure.*

§519.36. *Discovery and Production of Documents and Things for Inspection, Copying, or Testing.*

§519.37. *Interrogatories to Parties.*

§519.38. *Requests for Admissions.*

§519.39. *Subpoena of Witnesses and for the Production of Documentary Evidence.*

§519.40. *Form of Subpoena.*

§519.41. *Witness Shall Attend Hearing.*

§519.42. *Evidence.*

§519.43. *Issuance of Commission to Take Deposition.*

§519.44. *Witness Shall Comply with Subpoena.*

§519.45. *Submission to Witness; Changes; Signing.*

§519.46. *Use of Deposition Transcripts in Board Proceedings.*

§519.47. *Failure to Attend; Default Judgment.*

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 21, 1998.

TRD-9814908

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-7848

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22 TAC §§519.1-519.13

The Texas State Board of Public Accountancy (Board) proposes new rules §§519.1-519.13, concerning Practice and Procedure.

The proposed new rules will be the Board's procedural rules for administrative hearings for topics not addressed by the State Office of Administrative Hearings' (SOAH) procedural rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the rules will be zero because the proposed rules are, for the most part, a re-numbering and re-ordering of existing Board rules.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules will be zero because the proposed rules will not cause any additional action by state or local government.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rules will be zero because the proposed rules do not require anyone to engage in any additional activity.

Mr. Treacy has determined that for the first five-year period the rule is in effect the public benefits expected as a result of adoption of the proposed new rules will be streamlined Board procedural rules in harmony with SOAH's procedural rules.

The probable economic cost to persons required to comply with the rules will be zero because the proposed rules do not require anyone to engage in any additional activity.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rules will not have an adverse economic effect on small businesses because the proposed rules do not require any additional action by anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The proposed new rules are proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act, and sec-

tion 2003.050 of the Government Code which requires the Chief Administrative Law Judge to adopt rules that govern hearings conducted by SOAH.

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

§519.1. Purpose and Scope.

This chapter will govern the processes followed by the board in rulemaking proceedings, contested cases under the Administrative Procedure Act, and informal conferences and dispositions of matters before the board. These rules also supplement, as appropriate, the Rules of Practice and Procedure of the State Office of Administrative Hearings.

§519.2. Computation of Time.

In computing any period of time prescribed or allowed by these sections, by order of the board, or by any applicable statute, the period shall begin on the day after the act or the event considered, and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal state holiday.

§ 519.3. Rulemaking Proceedings.

(a) Service of a proposed section of the rules or amendment of any existing section of the rules shall be governed by Sections 2001.023 and 2001.024 of the Administrative Procedure Act.

(b) A request for a public hearing to receive comments on a proposed rulemaking must be received in the offices of the board no later than 5:00 p.m. of the tenth calendar day prior to the board meeting scheduled to consider the adoption of the proposed rule.

(c) A person wishing to testify at a public hearing to receive comments on a proposed rulemaking or revision must file a written copy of his or her testimony in the offices of the board by no later than 5:00 p.m. of the fifth calendar day prior to the public hearing unless the board announces a different filing date.

§519.4. Conduct and Decorum.

(a) Every party, witness, attorney, or other representative appearing before the board, board committees or board staff shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the executive director, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(b) Any person engaging in disorderly conduct or communicating with board members in violation of the prohibitions on ex parte communication may be excluded from any board, committee or staff proceeding and treated as if defaulting on obligations to the board.

§519.5. Ex Parte Consultations.

Unless required for the disposition of ex parte matters as authorized by law, board members, committee members, or employees of the board assigned to render a decision or make findings of fact and conclusion of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and with opportunity for all parties to participate.

§519.6. Informal Conferences and Informal Dispositions.

(a) An informal conference is defined as an informal meeting between a licensee and person(s) designated by the executive director

or a board committee with subject-matter responsibility, held for the purpose of reaching agreement on a proposed informal disposition of a disciplinary action. An informal conference shall be voluntary and shall not be a prerequisite to a hearing in a disciplinary action.

(b) Procedure.

(1) The executive director or committee may request the parties, their attorneys, or representatives to appear at a specified time and place for an informal conference.

(2) Notice of an informal conference shall state the nature of the charge or charges against the respondent and shall be served on the respondent no less than ten days prior to the date of said conference either personally or by mailing a copy thereof by certified mail to the last known address of the respondent.

(3) Complainant shall be notified and given opportunity to appear at the informal conference.

(c) At any informal conference, the respondent may appear in person and by counsel and may produce evidence and witnesses on his own behalf.

(d) Informal disposition. In the event the respondent and the board agree to an informal disposition, an agreed consent order shall be prepared and presented to the board for final decision thereon. The agreed consent order shall contain agreed findings of fact and conclusions of law, and shall be signed by all parties thereto.

(e) Ratification by the board. An agreed consent order shall be submitted to the board for ratification and the board may:

- (1) adopt the order, at which time it becomes final; or
- (2) remand the order to the committee.

§519.7. Administrative Penalties.

(a) Board committees and the executive director are delegated the authority to determine that any alleged violation warrants an administrative penalty under Section 21D of the Public Accountancy Act.

(b) The report of any such determination may be included in a notice of hearing.

(c) A request for a hearing under Section 21D(d) of the Public Accountancy Act shall clearly notify the staff that the hearing must address issues relevant to the assessment of an administrative penalty by including the language "RESPONDENT SPECIFICALLY REQUESTS A HEARING ON ADMINISTRATIVE PENALTIES" in capital letters. Failure to include such language shall be a waiver of the right to a hearing within the meaning of Section 21(D)(d) of the Public Accountancy Act.

§ 519.8. Subpoenas, Orders for Production or Inspection and Commissions for Depositions; Discovery from Experts.

(a) The executive director is delegated authority to issue subpoenas, orders for production or inspection and commissions for depositions authorized by the Administrative Procedure Act in contested cases.

(b) A party may obtain discovery of the identity and location (name, address, and telephone number) of an expert who may be called as an expert witness, the subject matter on which the expert is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which related to or from the basis of the mental impressions and opinions held by the expert. Provided, however, that under no circumstances may the respondent

resist discovery in any action by the board on the grounds that the respondent as a licensee may testify as an expert.

§519.9. Procedures after Hearing.

(a) Filing of exceptions and replies. Any party of record may, within 15 days of the date of service of the proposal for decision, unless the administrative law judge has set a shorter or longer period of time, file exceptions to the proposal for decision. Replies to these exceptions shall be filed within 15 days after the date of filing the exceptions unless the administrative law judge has set a shorter or longer period of time. A request for extension or decrease of time within which to file exceptions or replies shall be filed with the administrative law judge, and a copy of the request shall be served on all parties of record by the party making the request. The administrative law judge shall promptly notify the parties of the decision with regard to these requests. Additional time shall be allowed only when the interests of justice so require. Upon the expiration of the time for filing exceptions or replies to exceptions, or after time for filing exceptions or replies to exceptions, or after the replies and exceptions have actually been timely filed, the proposal for decision will be considered by the board and either adopted, modified and adopted, or remanded to the administrative law judge. If remanded to the administrative law judge, the revised proposal for decision thereafter rendered by the administrative law judge shall be clearly labeled as an amended proposal for decision. A copy of the proposal for decision shall be served forthwith by the administrative law judge on each party, or each party's attorney of record, and the board. Service shall be in accordance with the board's rules.

(b) Form of exceptions and replies. Exceptions and replies to exceptions shall conform as nearly as practicable to the rules provided for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and any arguments and legal authority relied upon shall be grouped under the exceptions to which they relate. Any party filing exceptions and replies shall provide the board with an original and 17 copies.

(c) Oral argument before the board. Any party may request oral argument before the board before the final determination of any proceeding, but the request must be filed in the offices of the board by no later than 5:00 p.m. of the fifth working day prior to the board meeting. Oral argument shall be allowed only at the discretion of the board. A request for oral argument may be incorporated in the exception, reply to exceptions, or in a separate pleading. In the event oral argument is granted by the board, each party who has filed exceptions and replies may be limited to a maximum of 20 minutes for presentation thereof. The board shall require one spokesman per party and position.

(d) Motion for rehearing. In the event a motion for rehearing is filed, the executive director shall have authority to act for the board in either granting or denying such motion.

(e) Administrative cost recovery rule. The board may for good cause and in accordance with the Public Accountancy Act of 1991, after notice and hearing, impose direct administrative costs in addition to other sanctions provided by law or these rules. Direct administrative costs include, but are not limited to, attorneys' fees, investigative costs, witness fees and deposition expenses, travel expenses of witnesses, fees for professional services of expert witnesses, the cost of a study, analysis, audit, or other projects the board finds necessary in preparation of the state's case.

(f) Changes to recommendation. To protect the public interest and to ensure that sound accounting principles govern the decisions of the board, it is the policy of the board to change a finding

of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge when the proposed order is clearly:

- (1) erroneous;
- (2) against the weight of the evidence;
- (3) based on unsound accounting principles or auditing standards;
- (4) based on an insufficient review of the evidence;
- (5) not sufficient to protect the public interest; or
- (6) not sufficient to adequately allow rehabilitation of the licensee.

§519.10. The Record and Assessment of Cost of Preparation.

- (a) The record in any case shall include:
 - (1) all pleadings, motions, and intermediate rulings;
 - (2) evidence received or considered;
 - (3) the statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings on them;
 - (5) any decision, opinion, objections, and rulings on them;
 - (6) all staff memoranda and correspondence from parties or data submitted to or considered by the administrative law judge or the board in making decisions.

(b) The board may require a party who appeals a final decision of the board to pay all or part of the actual cost of preparation of the original or a certified copy of record that is required to be transmitted to a reviewing court.

§519.11. Follow-Up.

The board may utilize investigators, board staff, committee members, or enforcement advisory committee members to insure that all persons adhere to the terms and conditions of board orders in disciplinary matters.

§ 519.12. Publication of Disciplinary/Administrative Sanctions.

The board may cause to be published in the board's official publication, the Texas State Board Report, and may publish in newspapers of general distribution in the state, the name of any certificate or registration holder who is the subject of a reprimand, suspension of certificate or registration, revocation of certificate or registration, or surrender of certificate or registration in lieu of disciplinary action, or any other disciplinary action. Such publication shall not occur until a final board order has been issued. The publication may contain a narrative factual summary of the actions giving rise to the disciplinary/administrative action.

§519.13. Mediation and Alternative Dispute Resolution.

The board's executive director or his delegate shall represent the board in any mediation or other alternative dispute resolution process ordered by the State Office of Administrative Hearings or by any tribunal with jurisdiction over 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.

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

TRD-9814909
William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 305-7848

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Chapter 523. Continuing Professional Education

Subchapter A. Continuing Professional Education (CPE) Programs

22 TAC §523.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.1, concerning Formal Continuing Professional Education.

The proposed amendment to §523.1 will allow CPAs to take continuing professional education courses through an interactive format.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule does not require any action by state or local governments;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any action by state or local governments; and

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any action by state or local governments.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that CPAs are allowed to take continuing professional education courses through an interactive format. The probable economic cost to persons required to comply with the amendment will be zero because the rule does not require any action by anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because this provision will not have any economic effect. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the

statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, § 2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other statute, code or article is affected by this proposed amendment.

§523.1. Formal Continuing Professional Education Purpose and Definition.

(a) To help insure that practitioners receive quality continuing education, appropriate standards are needed. With appropriate standards, programs are less likely to vary in quality of development, presentation, and measurement in reporting of credits. Moreover, the large number of programs available throughout the United States, the varying backgrounds of credentials of sponsoring organizations, and the mobility of participants in these programs, create measuring and reporting problems that suggest the need for nationally uniform standards. If a group program complies with the standards in this statement, it becomes a formal group program.

(b) A self-study program is an educational process designed to permit a participant to learn a given subject without major interaction with an instructor. For a self-study program to be formal:

(1) the sponsor must provide a certificate based upon evidence of satisfactory completion, such as a completed workbook or examination; and

(2) it must comply with the standards in this statement.

(c) "Computer-based interactive format" shall mean a program designed to simulate a classroom learning process by employing structured software or technology-based systems that provide significant ongoing interactive feedback between the participant and the software of the instructor regarding the learning process. These programs clearly define lesson objectives and manage the participant through the learning process by:

(1) requiring frequent response to questions that test for understanding of the material presented;

(2) providing evaluative feedback to incorrectly answered questions; and

(3) providing reinforcement feedback to correctly answered questions.

(d) [(e)] Sponsors are the organizations responsible for presenting programs and are not necessarily program developers; however, it is the sponsor's responsibility to see that their programs comply with all the standards in this statement.

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

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TRD-9814918

William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Subchapter B. Continuing Professional Education Standards

22 TAC §523.32

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.32, concerning Ethics Course.

The proposed amendment to §523.32 will allow the Board to require applicants for licensure to complete a four-hour ethics course as a condition for licensure and clarifies that the examination on the Board's rules is a written examination. The rule also states that a licensee who is granted exempt status does not have to complete an ethics course, but if the exempt licensee reactivates their license and are no longer on exempt status, they have to complete a four-hour ethics course within one year of reactivation.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule does not require any action by state or local governments;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any action by state or local governments; and

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule does not require any action by state or local governments.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be new CPAs who are familiar with the Board's rules and professional ethics and reactivated licensees who are current on their ethics course.

The probable economic cost to persons required to comply with the amendment will be \$45 to \$75 dollars. The cost of a four-hour ethics course varies per ethics course vendor and whether one is or is not a member of the organization that is presenting the ethics course. This cost does not include the cost of travel or overnight stays because these are currently inapplicable.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses. The

Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other statute, code or article is affected by this proposed amendment.

§523.32. *Ethics Course.*

(a) General. Each certificate or registration holder is required to successfully complete and report to the board ~~within three years of January 1, 1995,~~ a four-hour course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board-registered provider of continuing professional education. Upon completion of the four-hour course, each certificate or registration holder shall report to the board the successful completion of a minimum of two hours of instruction on the board's Rules of Professional Conduct within [every] three years after the date the first course was taken and every three years thereafter. [January 1, 1998.] ~~[A person certified or registered after January 1, 1995, shall report to the board the successful completion of the four-hour course within three years of certification or registration. That person shall then report the completion of the two-hour course every three years after the initial three-year reporting period. A certificate or registration holder granted retired, permanent disability, or other exempt status is not required to complete the ethics course described during their exempt status.]~~

(1) An individual applying for certification after September 1, 1998 must successfully complete and submit to the board proof of completion of the four-hour ethics course prior to being issued a certificate. The individual shall then report the completion of the two-hour course within three years after the initial date of the issuance of the certificate and every three years thereafter.

(2) A certificate or registration holder granted retired, permanent disability, or other exempt status is not required to complete the ethics course described during the exempt status. When the exemption status is no longer applicable, the individual must complete the four-hour ethics course within one year after the exemption is no longer in effect.

(b) Course content and board approval. Before a provider of continuing professional education can offer this course, the content of the course must be submitted to the continuing professional education committee of the board for ~~prior~~ approval. Course content shall be approved only after demonstrating, either in a live instructor format, or a computer-based interactive format as defined in Section 523.1(c) of this chapter (relating TO Formal Continuing Professional Education) ~~[(a program designed to simulate a classroom learning process by employing software or technology-based systems that provide significant ongoing interactive feedback between the participant and the instructor regarding the learning process); or in~~

~~a self-study format,~~ that the course contains the underlying intent established in the following criteria.

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

(c) (No change.)

(d) Texas resident. A certificate or registration holder who resides in the state of Texas may not take the ethics course via self-study but must take the ethics course in a live instructor format or in an interactive computer-based format ~~[(a program designed to simulate a classroom learning process by employing software or technology-based systems that provide significant ongoing interactive feedback between the participant and the instructor regarding the learning process)].~~

(e) Out-of state resident. A certificate or registration holder who does not reside in the state of Texas may take the course in either a live instructor format, (a)[an] computer-based interactive format, a self-study format, or may write the Board to request an exemption.

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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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Chapter 527. Quality Review

22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4, concerning Quality Review Program.

The proposed amendment to §527.4 will allow for a clearer understanding of when a practice unit must register for peer review and adds the National Conference of CPA Practitioners to the list of qualified sponsoring organizations.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because this rule does not require anyone to take any additional action;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because this rule does not require anyone to take any additional action; and

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because this rule does not require anyone to take any additional action.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be a clearer understanding of when a practice unit must register for peer

review and the addition of the National Conference of CPA Practitioners to the list of qualified sponsoring organizations. The probable economic cost to persons required to comply with the amendment will be zero because this rule does not require anyone to take any additional action.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 23, 1998. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because this rule does not require anyone to take any additional action. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§527.4. *Quality Review Program.*

The following operations of the program shall be conducted by the board. This section shall not require any firm to become a member of any sponsoring organization.

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

~~[(A) Each practice unit licensed or registered with the board as of January 1, 1992, shall schedule a review to commence no later than December 31, 1994. Each firm which currently has a review scheduled or has had a review as required by rule shall schedule an additional review for each successive three-year increment thereafter, or earlier as may be required by the sponsoring organization. Each practice unit shall enroll with one of the sponsoring organizations approved in accordance with paragraph (6) of this section. Each practice unit shall adopt the review date assigned by the appropriate sponsoring organization and shall notify the board of such date within 30 days of its assignment.]~~

~~[(B)]~~ Each practice unit registered with the board shall enroll in the[a] program of an approved sponsoring organization in accordance with paragraph (6) of this section within one year from its initial licensing date or the performance of services that require a review. The practice unit shall adopt the review date assigned by the sponsoring organization, ~~[and schedule an additional review for each~~

~~successive three-year increment thereafter,] and [shall] must notify the board of the[each] date [and do so] within 30 days of its assignment.~~

~~(B) [(C)]~~ It is the responsibility of the practice unit to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review within six months after the report date.

(3)-(5) (No change.)

(6) Sponsoring organizations. Qualified sponsoring organizations shall be the SEC Practice Section (SECPS); American Institute of Certified Public Accountants Peer Review Program, state CPA societies fully involved in the administration of the AICPA Peer Review Program, National Conference of CPA Practitioners (NCC-PAP), and such other entities which register with and are approved by the board on their adherence to the quality review minimum standards.

(7) (No change.)

(8) The board may accept an extension, not to exceed 180 days, as granted by the sponsoring organization ~~[for the] to~~ conduct [of] a review, provided the board is notified by the practice unit within 20 days of the date of such an extension.

(9)-(10) (No change.)

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

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TRD-9814920

William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Part XXIII. Texas Real Estate Commission

Chapter 533. Practice and Procedure

22 TAC §§533.1-533.30

(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 Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Real Estate Commission (TREC) proposes the repeal of §§533.1-533.30, concerning practice and procedure. These sections would be replaced by new sections addressing rulemaking and the procedures in contested cases. As part of its rule review process, TREC has determined that most of the sections proposed for repeal simply restate or paraphrase provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, et seq., and that these sections may be replaced by a new section providing that proceedings before TREC will be conducted in accordance with the provisions of the APA. Current §533.8 and §533.9 concern formal petitions for declaratory or advisory opinions and are unnecessary, because the commission has statutory authority

to adopt rules implementing the statutes it administers. Repeal of the sections would permit persons involved in rulemaking or contested cases to rely upon the governing provisions of the APA except in procedural matters unique to TREC, such as the consideration of motions before the members of the commission, and eliminate the need for TREC to amend its rules as the APA is modified by the legislature. Sections 533.4, 533.5, 533.15, 533.16, 533.18, 533.19, 533.29 and 533.30 would be revised and adopted as part of a new series of procedural rules proposed by TREC in connection with the proposed repeal of §§533.1-533.30.

Mark A. Moseley, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals. There is no anticipated impact on local or state employment as a result of implementing the repeals.

Mr. Moseley also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals will be simplification of the agency's rules of practice and procedure. There is no anticipated adverse effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

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

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

The statutes which are affected by this proposal are Texas Civil Statutes, Articles 6573a. and Article 6573b, and the Texas Property Code, Chapter 221.

- §533.1. *Definitions.*
- § 533.2. *Object of Rules.*
- §533.3. *Scope of Rules.*
- §533.4. *Filing of Documents.*
- §533.5. *Computation of Time.*
- §533.6. *Motions for Postponement, Continuance, Withdrawal or Dismissal.*
- §533.7. *Conduct and Decorum.*
- §533.8. *Petition for Declaratory Rulings.*
- §533.9. *Request for Advisory Opinions.*
- §533.10. *Adoption of Rules: Notice of Intent to Adopt Rules.*
- §533.11. *Adoption of Rules: Request for Comments; Hearing; Explanation of Commission Action.*
- §533.12. *Adoption of Rules: Emergency Rules.*
- § 533.13. *Adoption of Rules: Petition for Adoption of Rules.*
- §533.14. *Adoption of Rules: Informal Consultations.*
- §533.15. *Contested Case: Disapproval of an Application for a License.*
- § 533.16. *Contested Case: Suspension and Revocation of a License.*
- §533.17. *Contested Case: Notice of Hearing.*

- §533.18. *Contested Case: Presiding Officer.*
- §533.19. *Contested Case: Limitations on Number of Witnesses.*
- §533.20. *Contested Case: Right to Counsel; Right to Participate.*
- §533.21. *Contested Case: Persons Designated Presiding Officer; Ex Parte Consultations.*
- §533.22. *Contested Case: Subpoenas; Depositions.*
- §533.23. *Contested Case: Testimony.*
- § 533.24. *Contested Case: Rules of Evidence.*
- § 533.25. *Contested Case: The Record.*
- § 533.26. *Contested Case: Informal Disposition.*
- § 533.27. *Contested Case: Final Decisions and Orders.*
- §533.28. *Contested Case: Finality of Decisions for the Purpose of Appeal.*
- §533.29. *Contested Case: Prerequisite to Judicial Review; Motions for Rehearing, Modification of Order, or Probation.*
- §533.30. *Contested Case: Judicial Review.*

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

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TRD-9814621

Mark A. Moseley

General Counsel

Texas Real Estate Commission

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

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22 TAC §§533.31-533.39

The Texas Real Estate Commission (TREC) proposes new §§533.31-533.39, concerning practice and procedure. These sections would replace TREC's existing sections which address rulemaking and the procedures for contested cases. As part of its rule review process, TREC has determined that most of the existing sections in Chapter 533 simply restate or paraphrase the provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, et seq. New §533.31 would clarify that the procedures for rulemaking and contested cases followed by TREC are governed by Chapter 533 and by the APA. New §533.32 deems a document in a contested case or rulemaking proceeding to be filed when the document is received by the agency. New §533.33 provides the method for calculating any period of time set forth for an action under the chapter. New §533.35 provides for notice and hearing for suspension or revocation of a license. New §533.36 addresses the authority of the staff hearings officer or member of the commission presiding in a contested case hearing. New §533.37 authorizes the limitation of witnesses if the expected testimony is merely cumulative. New §533.38 establishes the procedures for filing, responding to, and ruling upon motions for rehearing, modification of order, or probation before either a staff hearings officer or the members of the commission. New §533.39 provides for judicial review in accordance with the statute under which relief is being sought.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be simplification of the agency's rules of practice and procedure. There is no anticipated adverse effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

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

The statutes which are affected by this proposal are Texas Civil Statutes, Articles 6573a. and Article 6573b, and the Texas Property Code, Chapter 221.

§533.31. Procedures for Rulemaking and Contested Cases.

The procedures for rulemaking and contested cases before the Texas Real Estate Commission or a presiding officer authorized by the Texas Real Estate Commission are governed by this chapter and by The Administrative Procedure Act, Texas Government Code, §2001.01, et seq.

§533.32. Filing of Documents.

When a document is required to be filed in a contested case or rulemaking proceeding, the document is deemed filed when it is received in the office of the Texas Real Estate Commission, Austin, Texas.

§533.33. Computation of Time.

In computing any period of time prescribed or allowed by these sections, by an order issued by the Texas Real Estate Commission, or by any applicable statute, the period begins on the day after the act, event or default in controversy and concludes on the last day of the computed period, unless the last day is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday nor a legal holiday.

§533.34. Disapproval of an Application for a License or Registration.

Notice and hearings relating to disapproval of an application for a license or registration issued by the Texas Real Estate Commission are governed by the statute under which the application was filed and by The Administrative Procedure Act, Texas Government Code, §§2001.001 et seq. The commission also will notify a sponsoring broker or sponsoring inspector of the disapproval, but a sponsoring broker or sponsoring inspector is not required to request a hearing or to be named or admitted as a party in the proceeding before the commission. A hearing pursuant to this section will be held at a place designated by the commission. Failure to request a hearing timely waives the right to judicial appeal, and the determination becomes final and unappealable.

§533.35. Revocation or other Action against a License or Registration.

A license or registration issued by the Texas Real Estate Commission may not be revoked or other action taken against the license or registration except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing. The hearing will be held at a time and place designated by the commission, except that upon the written request of a respondent licensed as a Texas real estate broker, real estate salesperson, or inspector, or registered as an easement or right-of-way agent, filed within five days after receipt of the notice of hearing, the hearing will be held in the county where the principal place of business of the respondent is maintained. If the respondent is a licensee or registrant who does not reside within this state, the hearing may be held in any county within this state.

§533.36. Hearings before Presiding Officer or the Members of the Commission.

(a) Hearings in contested cases will be conducted by the presiding officer who shall have authority to administer oaths, to examine witnesses, to rule upon the admissibility of evidence and amendments to pleadings, and to recess any hearing from day to day.

(b) If the presiding officer dies, becomes disabled or withdraws or is removed from employment on the case at any time before the final decision thereon, the agency may appoint another presiding officer who may perform any function remaining to be performed without the necessity of repeating any previous proceedings on the case.

(c) The chairperson of the commission or a member designated by the chairperson shall preside over hearings conducted by the commission membership. The chairperson or designated member shall rule on the admissibility of evidence or amendments to pleadings. The chairperson or designated member may enter proposed orders which have been approved by the commission.

§533.37. Limitations on Number of Witnesses.

The presiding officer or the member of the commission, as the case may be, shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§533.38. Motions for Rehearing, Modification of Order, or Probation.

(a) Except in the case of an emergency decision or order, a motion for rehearing is a prerequisite to judicial review. In addition to any motion for rehearing, a party may file a motion to modify the prior order or a motion for probation of the prior order, or both. The filing and consideration of motions shall be governed by the provisions of this section.

(b) A motion for rehearing, modification of order, or probation must set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts was error, such as a violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion or other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the presiding officer, or the members of the commission, as the case may be, shall presume that the motion should be overruled.

(c) If the party filing the motion desires the motion to be considered by, and any rehearing to be before, the members of the commission, the party shall include in the motion a request for consideration by, and any rehearing to be before, the members of the commission. A party shall submit the motion to either the presiding

officer or to the members of the commission, as the case may be, for consideration and appropriate action. A motion which requests action by the presiding officer, and in the alternative, action by the members of the commission, will be deemed a motion for consideration of the presiding officer and treated accordingly. A motion that does not include an express request for consideration by the members of the commission will be deemed to be a request for consideration by a presiding officer, and if the party has filed a timely motion for rehearing to be considered by either the presiding officer or the members of the commission, the party need not file any additional motions for rehearing as a prerequisite for judicial review.

(d) A motion for rehearing, modification of order, or probation must be filed within 20 days after the date the party or the party's attorney of record is notified of the final decision or order. Replies to the motion must be filed with the commission within 30 days after the party or the party's attorney of record is notified of the final decision or order. The presiding officer or the commission itself, as appropriate, shall act on the motion within 45 days after the party or the party's attorney of record is notified of the final decision or order. The presiding officer or the members of the commission, as appropriate, may, by written order, extend the time for filing, replying to, and taking action on a motion, not to exceed 90 days after the date the party or the party's attorney of record is notified of the final decision or order. In the event of an extension of time, a motion is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the party or the party's attorney of record is notified of the final decision or order. The presiding officer or the members of the commission, as appropriate, may modify this schedule with the consent of the parties.

(e) Motions for rehearing, modification of order, or probation before the members of the commission will be heard in accordance with this section. Except where the context clearly contemplates a different procedure to be followed before the members of the commission, any hearings before the presiding officer to consider motions will be conducted in the manner required by this section.

(1) The chairperson or the member appointed by the chairperson to preside ("the presiding member") shall announce the case. The members shall consider a motion for rehearing prior to considering or acting upon a motion for modification of order or probation. The members shall consider a motion for modification of order prior to considering or acting upon a motion for probation. Upon the request of any party, the presiding member shall conduct a prehearing conference with the parties and their attorneys of record. The presiding member shall announce reasonable time limits for any oral arguments to be presented by the parties. The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion or reply is filed.

(2) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(3) After being recognized by the presiding member, the members of the commission may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the

party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(4) Upon the conclusion of oral arguments, questions by the members of the commission, and any discussion by the members of the commission, the presiding member shall call for a vote on the motion. It will not be in order for a member of the commission to make a separate motion or to second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled. The granting of a motion for rehearing vacates any prior order in the contested case.

(f) A party filing a motion for modification of order or probation shall specify in the motion the modification or such terms and conditions of probation as are desired by the party. A party replying to a motion may also specify a modification or terms and conditions for probation. In addition to the terms and conditions for probation which are set forth in The Real Estate License Act, Article 6573a, Texas Civil Statutes, (the Act) §15B(d), the members of the commission or a commission employee acting as presiding officer may require a licensee:

(1) to comply with the provisions of the Act and the rules of the Texas Real Estate Commission;

(2) to cooperate with the Enforcement Division of the Texas Real Estate Commission in the investigation of any complaints filed during the probation;

(3) to complete courses of education relevant to the matter which is the basis of the probation;

(4) to repay money belonging to another person or to the State of Texas; or

(5) to comply with such other reasonable terms and conditions as the members of the commission or commission employee acting as presiding officer may impose.

§533.39. Judicial Review.

A person who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case is entitled to judicial review. The petition must be filed in accordance with the requirements of the statute under which relief is sought.

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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Mark A. Moseley

General Counsel

Texas Real Estate Commission

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



Chapter 537. Professional Agreements and Standard Contracts

22 TAC §§537.11, 537.26, 537.27

The Texas Real Estate Commission (TREC) proposes amendments to §§537.11, 537.26, and 537.27, concerning standard

contract forms. These actions would adopt by reference two revised forms to be used by Texas real estate licensees when negotiating a temporary lease under which either the buyer or seller of residential property becomes a tenant. Contract forms promulgated by TREC are developed by the Texas Real Estate Broker-Lawyer Committee, an advisory committee consisting of six brokers appointed by TREC and six attorneys appointed by the President of the State Bar of Texas. Forms are developed by the committee to expedite real estate transactions and reduce controversies to a minimum while safeguarding the interests of the parties. Real estate licensees are required to use forms promulgated by TREC in the kind of transaction for which they were intended, unless the parties to the transaction or their attorneys prepare the documents relating to the transaction. The amendments are proposed as part of the continuing review and revision of the forms promulgated by TREC.

The proposed amendment to §537.11 would add form TREC Number 15-3, Seller's Temporary Lease, and form TREC Number 16-3, Buyer's Temporary Lease, to the list of forms promulgated by TREC. The amendment to §537.26 would adopt by reference the revised Seller's Temporary Lease, which is used in a transaction when a seller occupies the property as a tenant for no more than 90 days after the closing of the sale. The addendum has revised to clarify that the provisions of the Texas Property Code relating to security devices do not apply to temporary leases of not more than 90 days and to provide a more specific waiver of the landlord-buyer's duty to inspect and repair smoke detectors. Other substantive changes include a provision requiring the seller-tenant to pay the full amount of the rental at the commencement of the lease, although the form would no longer require advance payment of hold-over rental. The form also has been rewritten to be consistent with the language and style of the current TREC contract forms.

The amendment to §537.27 would adopt by reference a revised Buyer's Temporary Lease, which is used in a transaction when a buyer occupies the property as a tenant for no more than 90 days before the closing of the sale. The form has been changed to address the non-applicability of the Texas Property Code and provide for a specific waiver of the landlord-seller's duty to inspect and repair smoke detectors, to require the buyer-tenant to pay the anticipated amount of rental at the commencement of the lease, and to eliminate a paragraph relating to the deposit of additional earnest money, which may be addressed in the purchase contract. The form also has been rewritten to be consistent with the language and style of the current TREC contract forms.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of \$7.50 per set of 50 copies.

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

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

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

§ 537.11. *Use of Standard Contract Forms.*

(a) Standard Contract Form TREC No. 9-3 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-2 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-3 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 13-1 is promulgated for use as an addendum concerning new home insulation to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 15-3 [15-2] is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-3 [16-2] is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-3 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 21-3 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 23-2 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-2 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-2 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-2 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 29-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC No. 30-1 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No.31-1 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway.

Standard Contract Form TREC No. 35-1 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form No. 36-0 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-0 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-0 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-0 is promulgated for use as an amendment to promulgated forms of contracts.

(b)-(j) (No change.)

§ 537.26. *Standard Contract Form TREC No. 15-3 [45-2].*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-3 [45-2] approved by the Texas Real Estate Commission in 1998 [4994]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Capitol Station, Austin, Texas 78711.

§537.27. *Standard Contract Form TREC No. 16-3 [46-2].*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-3 [46-2] approved by the Texas Real Estate Commission in 1998 [4994]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711- 2188.

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 16, 1998.

TRD-9814646

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 1, 1998

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



Part XXVI. Texas Board of Licensure for Professional Medical Physicists

Chapter 601. Medical Physicists

22 TAC §§601.2, 601.4, 601.6, 601.8, 601.10, 601.11, 601.21

The Texas Board of Licensure for Professional Medical Physicists with the approval of the Texas Department of Health proposes amendments to §§601.2, 601.4, 601.6, 601.8, 601.10, 601.11, and 601.21, concerning the licensure of medical physicists. The amendments cover definitions; fees; application procedures; licensure by examination; license issuance and license holder requirements; license renewal; and medical physics specialties and scope of practice.

The amendments revise the definitions of "quality assurance," "quality control," and "supervision." All definitions are included with numbers to comply with the new *Texas Register* format required by 1 Texas Administrative Code, §91.1, effective February 17, 1998. Also, the amendments will delete references to license identification cards; update and clarify master's and doctoral degrees necessary for licensure; and add language

addressing licensure exemption for individuals gathering data under the supervision of a licensed medical physicist.

Bernie Underwood, C.P.A. Chief of Staff Services, Health Care Quality and Standards, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Underwood has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will continue to assure the appropriate regulations of medical physicists and continue to identify competent licensees. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Jeanette Hilsabeck, Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas, 78756-3183, (512) 834-6655. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, §11, which requires the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

These proposed amendments implement the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n.

§ 601.2. 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 Texas Medical Physics Practice Act (Act), Texas Civil Statutes, Article 4512n, concerning the licensure and regulation of professional medical physicists.

(2) Applicant - A person who applies to the Texas Board of Licensure for Professional Medical Physicists (board) for a license or temporary license.

(3) APTRA - The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(4) Board - The Texas Board of Licensure for Professional Medical Physicists.

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

(6) Department - The Texas Department of Health.

(7) Diagnostic radiological physics - The branch of medical physics that deals with the diagnostic application of roentgen rays, gamma rays from sealed sources, ultrasonic radiation, or radiofrequency radiation and the use of equipment associated with the production and use of that radiation.

(8) Examination - The licensure test which consists of an open book examination for all specialties on Texas radiation control rules and one of the specialty examinations described in §601.8(d) of this title (relating to Licensure by Examination).

(9) Hearing examiner - An attorney duly designated and appointed by the chair of the board who conducts hearings under this chapter on behalf of the board.

(10) License - A certificate issued by the board authorizing the license holder to engage in the practice of medical physics and includes the temporary license and the annual license unless the context clearly indicates otherwise.

(11) Licensed medical physicist - A person who holds a license issued under the Act.

(12) Medical health physics - The branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

(13) Medical nuclear physics - The branch of medical physics that deals with the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes, and the use of equipment associated with the production and use of radionuclides.

(14) Medical physics - The branch of physics that is associated with the practice of medicine; and includes, but is not limited to, the field of radiological physics.

(15) Physician - A person licensed to practice medicine by the Texas State Board of Medical Examiners under Texas Civil Statutes, Article 4495b, or if out-of-state a person who holds a valid license to practice medicine in that state or territory.

(16) Practice of medical radiological physics- The use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive radiation. The term includes radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation-emitting equipment and radiopharmaceuticals, and consultation with a physician to assure accurate radiation dosage to a specific patient.

(17) Practitioner - A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed in this state and who prescribes radiologic procedures for other persons.

(18) Quality assurance - An all encompassing term that includes data recording, patient management, outcome analysis and equipment performance monitoring [~~For the purpose of these rules, quality assurance shall be construed as quality control~~].

(19) Quality control - A subset under quality assurance and concerns monitoring the performance of imaging, treatment and associated radiological equipment [~~An aggregate of activities designed to ensure adequate quality~~].

(20) Radiation - Ionizing and/or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

(21) Radiological physics - The branch of medical physics that includes diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, and medical health physics.

(22) Radiological procedure - A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment

of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures. The activities and services which fall within the definitions in the Act of the practice of medical radiological physics, diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics are not radiological procedures. The activities and services which fall within the Texas Regulations for Control of Radiation, 25 TAC §289.227(h); (q); (r)(3)(D); (v)(3); (x)(4)(A), (B), and (C); and (y)(3) [~~Part 32, §§32.11; 32.20(h); 32.30(e)(1)(iv); 32.41(e); 32.60(e)(1), (2), and (3); and 32.70(e)~~ (adopted by reference at 25 TAC §289.116 concerning Use of Radiation Machines in the Healing Arts and Veterinary Medicine), as amended], are not radiological procedures.

(23) Supervision - To oversee the work of a medical physicist holding a temporary license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement it is expected that the supervisor will accept responsibility for the work performed during this period. An individual is considered to be supervised if:

(A) the supervisor is routinely and substantially present at the facility during the performance of duties at that facility by the individual being supervised; and

(B) the supervisor assumes the responsibility, and is provided with the authority, to observe and correct the actions of the individual being supervised.

(24) Therapeutic radiological physics - The branch of medical physics that deals with the therapeutic application of roentgen rays, gamma rays, electron and other charged particle beams, neutrons, or radiations from radionuclide sources and the use of equipment associated with the production and use of that radiation.

(25) Upper division semester hour credits - Third-year level or above (junior, senior or graduate) course work completed from an accredited college or university.

§601.4. Fees.

The purpose of this section is to set out the fees for licensure as a medical physicist prescribed by the Texas Board of Licensure for Professional Medical Physicists (board).

(1) The schedule of fees for licensure as a medical physicist is as follows:

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

(E) license [~~and/or identification card~~] replacement fee - \$20;

(F)-(G) (No change.)

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

(5) A license holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. If the fee is not remitted timely, the license shall not be renewed. If the renewal license [~~card~~] has already been issued, it shall be invalid.

(6) (No change.)

§601.6. Application Procedures.

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

(c) Required application materials.

(1) Application form. The application form shall include the following:

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

(D) a statement that the applicant, if issued a license, shall return the license ~~and identification card(s)~~ to the board upon the revocation or suspension of the license;

(E)-(I) (No change.)

(2) (No change.)

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

§601.8. *Licensure By Examination.*

(a) Eligibility. To be eligible to take a specialty examination for an annual license for a professional medical physicist, a person must:

(1) have an earned master's or doctoral degree ~~from an accredited college or university~~:

(A) from a program of study in medical physics that is accredited by the American Association of Physicist in Medicine (AAPM) Commission on Accreditation of Medical Physics Education Programs [in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering];

(B) from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering [in a subject area not listed in subparagraph (A) of this paragraph, where the transcript includes at least 16 upper division semester hour credits in physics (general, modern, atomic, nuclear, radiation, or electromagnetic quantum mechanics), medical physics (diagnostic or imaging, nuclear medicine, therapeutic, or dosimetry), biophysics, radiological physics, or health physics]; or

(C) from an accredited college or university: [not meeting the requirements of subparagraphs (A) or (B) of this paragraph, but where the board considers and approves the degree as signifying successful completion of courses acceptable to the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering];

(i) in physical science (including chemistry), applied mathematics or engineering; and

(ii) have twenty semester hours (30 quarter hours) of undergraduate or graduate level physics courses, if offered;

(I) by the faculty of a Department of Physics and would be acceptable in meeting undergraduate or graduate degree requirements in physics of the offering department, or

(II) by the faculty of a program accredited in medical physics by the AAPM Commission on Accreditation of Medical Physics Education Program; or

(III) by the faculty of another science department and acceptable to the board.

(b)-(h) (No change.)

§ 601.10. *License Issuance and License Holder Requirements.*

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

(d) A licensee shall notify the board of any change in name, preferred mailing address, or place(s) of business or employment within 30 days of any change.

(1) (No change.)

(2) Notification of name changes shall include a certified or notarized copy of a marriage certificate, court decree, or a social security card reflecting the change and the license replacement fee. The licensee shall return any previously issued license ~~and identification cards~~.

§601.11. *License Renewal.*

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

(c) License renewal.

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

(4) The board shall issue a renewal license [identification card] to a licensee who has met all requirements for renewal. The licensee must display the current renewal ~~[identification card with the]~~ license.

(5) (No change.)

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

§601.21. *Medical Physics Specialties and Scope of Practice.*

(a) (No change.)

(b) Exemption. These rules shall not prohibit any licensed physician from performing any procedure or activity judged by the Texas Board of Medical Examiners to be the practice of medicine. Similarly, these rules shall not be construed to prohibit any licensed health care provider from conducting procedures or activities on patients under their care determined to be the practice of that particular profession by the profession's respective licensing board. This section does not apply to a person ~~[providing the services]~~ who is exempt from the Act or to an individual who, under the supervision of a licensed medical physicist, gathers data for professional use by the licensed medical physicist. These rules shall not be construed as qualifying a licensed medical physicist to install or perform corrective maintenance on medical equipment.

(c)-(d) (No change.)

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

Filed with the Office of the Secretary of State, on September 15, 1998.

TRD-9814544

Susan K. Steeg

General Counsel

Texas Board of Licensure for Professional Medical Physicists

Earliest possible date of adoption: November 1, 1998

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



Part XXIX. Texas Board of Professional Land Surveying

Chapter 661. General Rules of Procedures and Practices

Subchapter E. Contested Case

22 TAC §661.75

The Texas Board of Professional Land Surveying proposes an amendment to §661.75, concerning notice and hearing. This amendment allows for 10 days notice of any hearing.

Sandy Smith, executive director, 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.

Ms. Smith 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 that the rule will contain the same notice requirement that is required in the Administrative Procedures Act. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

§661.75. Notice and Hearing.

(a) An applicant or licensee is entitled to at least 10 [20] days notice of any hearing.

(b) Notice of hearing for rejection, cancellation, or revocation may be served personally by the board or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his/her last known address.

(c) In the event that notice cannot be effected by either of these methods after due diligence, the board may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his/her affairs. The board shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his/her business activities.

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

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

TRD-9814897

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 452-9427



Chapter 663. Standards of Responsibility and Rules of Conduct

Subchapter B. Professional and Technical Standards

22 TAC §663.17

The Texas Board of Professional Land Surveying proposes an amendment to §663.17, concerning monumentation. The

amendment will provide a method for the public to identify the responsible registrant or associated employer who sets boundary corner monumentation.

Sandy Smith, executive director, has determined that for the first five-year period the section is in effect, there will be fiscal implications as a result of enforcing the amendment. There will be an increased cost of \$1.00 per corner set.

Ms. Smith 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 identification for boundary corner monumentation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

§663.17. Monumentation.

(a) All monuments set by registered professional land surveyors shall be set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature and shall be of such material that in the surveyor's judgment will best achieve this goal.

(b) When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, §2(1) or (3)), the land surveyor shall set, or leave as found, sufficient, stable and reasonably permanent survey markers to represent or reference the property or boundary corners, angle points, and points of curvature or tangency. All survey markers shall be shown and described with sufficient evidence of the location of such markers on the surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he/she shall include in that written description:

(1) reference to and a description of the survey markers as shown on the plat; and

(2) the seal and signature of a registered or licensed surveyor.

(c) All metes and bounds description prepared for easements shall be tied to physical monuments of record related to the boundary of the affected tract. If the surveyor chooses to monument the easement or is directed to do so by his/her client, such monumentation shall be in compliance with subsection (b) of this section.

(d) Where practical, all monuments set by Professional Land Surveyors to delineate or witness a boundary corner shall be marked in a way that is traceable to the responsible registrant or associated employer.

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 21, 1998.

TRD-9814898

Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: November 1, 1998
For further information, please call: (512) 452-9427

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter R. Birthing Center Services

25 TAC §29.1701, §29.1702

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes amendments to §29.1701 and §29.1702, concerning birthing center services. Specifically, the sections concern benefits and limitations of birthing center services available to Medicaid recipients and conditions for a birthing center's participation in the Texas Medicaid Program.

The department has determined the need to amend the rules to ensure consistency with state regulations. These amendments remove reference to Category A birthing centers; replace the term "lay" midwife with the term "documented" midwife, and clarify that birthing attendant services provided by a documented midwife and associated birthing center services, continue to be non-covered and non-reimbursable by the Texas Medicaid Program.

Mr. Joe Moritz, Health Care Financing Budget Director, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Moritz also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these amendments will be the clarification of payable services provided through birthing centers and consistency with 25 Texas Administrative Code, Chapter 137. There will be no economic effect on small businesses and there are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Everett Daniel, Program Specialist III, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 794-5140. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

These amendments are proposed under the Human Resources Code, §32.02 and Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

These amendments affect Chapter 32 of the Human Resources Code and Chapter 531 of the Government Code.

§29.1701. Benefits and Limitations.

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

(c) Services provided by a documented [lay] midwife, including the associated birthing center services, [or a birthing center used by a lay midwife] are not covered or reimbursable by the Texas Medical Assistance Program.

§29.1702. Conditions for Participation.

Subject to the specifications, conditions, limitations, and requirements established by the department or its designee, a birthing center must:

(1) (No change.)

(2) be licensed by the appropriate state licensing authority to provide a level of services commensurate with the professional skills of a physician (MD or DO) or certified nurse-midwife (CNM) who acts as the birth attendant [~~(Category A birthing center)~~];

(3)-(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 18, 1998.

TRD-9814833

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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

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Chapter 98. HIV and STD Prevention

Subchapter A. HIV Services Grant Program

The Texas Department of Health (department) proposes the repeal of existing §§98.26, 98.28 and 98.29, amendments to §§98.1 - 98.4, 98.6, 98.8, 98.21 - 98.25, 98.27, 98.30 - 98.31, 98.41 - 98.44, and new §98.28 concerning the administration of treatment, health, and social service programs for persons with human immunodeficiency virus (HIV) infection. The proposed rules contain a change in the title of the chapter and in the title of this subchapter, revisions in the format and content of text within these sections to improve understanding, reflect statutory and department policy changes, and are necessary to clarify contractor performance requirements and to improve service delivery programs to persons infected with the human immunodeficiency virus (HIV) and/or who have acquired immunodeficiency syndrome (AIDS).

The proposed amendments include a change in the title of this chapter to "HIV and STD Prevention" which is reflective of the department's mission and the purpose of this program and a deletion of the word "Texas" from the title of this subchapter.

Specifically, the proposed amendment to §98.1 reflects the codification of Texas law and removes the General Appropriations Act as one authority under which the subchapter is adopted.

The proposed amendment to §98.2 reflect codification of Texas laws; deletion of the definition for counseling as the only reference is proposed to be removed from this section under the

definition of "Services" and from §98.41(a)(2) in the proposed rule text; deletion of the definition for "Medical transportation," deletion of the definition for "Support," a new definition for consortium; a new definition for HSDA; a new definition for "Request for application (RFA)" to cover non-competitive solicitation of current providers interested in renewing their contract with the department, a new definition for "STD," an amended federal agency name; an amended definition for "case management" and "family" which corresponds with our federal grantor's definition; an amendment to the definition for "HIV," an amendment to the definition of "Minor"; an amendment to the definition of "Provider" to include grant subrecipients; an amendment to "Request for proposal (RFP)" to clarify the solicitation as a competitive process; an amendment to the definition for "Services" which broadens the range of client services which the department may approve; an amendment to the definition of "Texas resident" with a proposed amendment to §98.41(a)(1)(B) expanding the criteria upon which Texas residency is to be determined.

The proposed amendment to §98.3 changes the department's responsibility regarding forms used in the program from being responsible for development of the forms to being responsible for approving forms.

The proposed amendment to §98.4 corresponds to the defined terms, and a new subsection (b) is proposed to restrict direct cash payments or reimbursements to clients.

The proposed amendment to §98.6 reflects codification of Texas law, corresponds to defined terms, and improves understanding of the department's role as coordinator, not provider of services.

The proposed amendment to §98.8 better clarifies the department's role as evaluator of services and allows the department more flexibility in defining contractor reporting requirements, corresponds to defined terms, and allows the department to expand the annual report to include information other than summarized data.

Proposed amendment to §98.21 clarifies that individuals are not eligible to receive funds directly from the department for the provision of services under this subchapter, and clarifies that agencies which receive program funds directly from the department may enter into contracts with subrecipients unless otherwise restricted.

The proposed amendment to §98.22 addresses the department's contract process; changes in wording corresponds to the defined terms; describes the competitive request for proposal process; allows the program to expedite the renewal of contracts by using a noncompetitive request for application process; requires the department to post notice of availability of on the Electronic State Business Daily in compliance with Title 10, Texas Administrative Code, Chapter 199; allows the department to directly solicit potential applicants; clarifies that interested persons will be forwarded an application packet within three working days of their request being by the department; deletes the specific details of a complete application and allows the department to establish the application requirements in the department's request for application or request for proposal; replaces the public hearing process for awarding grants totaling in excess of \$25,000 by referring to the same requirements contained in the Health and Safety Code, Chapter 85, Subchapter B; replaces the HIV Division with the Bureau of HIV and STD Prevention in the application review process; clarifies that the internal review panel composed by the department will

consist of persons knowledgeable and/or experienced with service delivery rather than simply being involved with health care delivery; places the responsibility of final selection of providers on the Bureau of HIV and STD Prevention rather than on the HIV Division; removes preference given to applicants whose consortia can or have developed comprehensive ambulatory community and home-based HIV support programs offering appropriate and compassionate care at reduced costs; requires approved applicants to execute contracts with the department prior to receiving any funds from the department for the approved activities; deletes the process for appealing the department's decision to not fund from this section and places it in §98.27; reflects a change in the name of the Uniform Grant and Contract Management Standards to the Uniform Grant Management Standards; and deletes the Human Immunodeficiency Virus Services Act from the list of assurances a contractor must abide.

The proposed amendment to §98.23 requires providers to resolve client complaints in a timely manner; requires the provider's complaint procedure to protect confidential information to the extent allowed by law; requires the provider to provide an opportunity for an informal reconsideration of the providers decision to deny an individual's application for services and a due process procedure for the denial, suspension, or termination of the client from the provider's program or modification of the level of benefits the client is eligible to receive for services delivered other than those delivered by medical professionals; refers clients to direct complaints regarding regulated or licensed medical professionals to the appropriate regulatory agency; allows the department to apply sanctions on a provider for failing to provide a complaint procedure for clients; deletes the opportunity for a provider to request a variance by the commissioner from the requirements of this section; extends the requirement to provide due process to a client to include an applicant for services; clarifies that should a client wish to be represented by counsel at a due process hearing the counsel's fees are the responsibility of the client.

The proposed amendment to §98.24 deletes the circumstances under which confidential information may be disclosed and requires providers to maintain confidential information according to law, corresponds to the defined terms, and allows the department to cancel a provider's contract for failure to have a confidentiality policy and/or procedure in place.

The proposed amendment to §98.25 requires providers to have a policy in place that is consistent with the workplace guidelines developed by the department and authorized by Health and Safety Code §85.012; removes the reference to §97.19; replaces the Public Health Promotion Division with the Bureau of HIV and STD Prevention as the correct program from which copies may be obtained of the guidelines; and requires providers to have a workplace policy, failure to have a workplace policy in place may lead to termination of the provider's contract.

The department proposes the repeal of §98.26 relating to payment for services as current contract language, department General Provisions for Contracts, and departmental policy address these requirements more thoroughly.

The proposed amendment to §98.27 corresponds to the defined terms; requires the department to provide written notice of the department's proposed action to the applicant for funds when the department has cause to deny the applicant's application; allows the applicant to dispute the department's decision; allows

the department to deny an application in accordance with criteria published in the department's request for proposal or request for application; deletes the list of reasons under which an application may be denied from this section; deletes the reasons under which a provider may have their contracting status modified, suspended, or terminated from this section as the process for applying sanctions on a provider and the process for the provider to appeal the department's decision to apply a sanction are addressed in the provider's contract with the department.

The new §98.28, changes the process for disputing the department's decision to deny an application to correspond with the department's policy XO-0110 entitled "Protest of Application or Bid Denial for Client Services Contract," adopts the department's policy by reference; and requires the Bureau of HIV and STD Prevention to provide the department's policy to any applicant requesting a copy.

The department proposes the repeal of §98.29 relating to the due process hearing process afforded to providers who may have their contract modified, suspended or terminated as the process under which a provider may dispute the department's decision to modify, suspend, or terminate a contract is addressed in the provider's contract with the department.

The proposed amendment to §98.30 corresponds to the defined terms and reflects the codification of the Texas law.

The proposed amendment to §98.31 relating to processing and investigating public complaints corresponds to the defined terms; directs persons wishing to file a complaint to notify the Bureau of HIV and STD Prevention rather than the HIV Division; clarifies that oral or written complaints will be accepted; informs the complainant that written complaints are subject to the Open Records Act, Government Code, Chapter 552; deletes the current language in the subsections relating to the internal process of receiving complaints, acknowledging complaints, investigating complaints, determining what actions the department shall take, and notifying parties involved in the complaint, and replaces those subsections with language that informs the complainant that complaints will be processed in accordance with the Bureau of HIV and STD Prevention policy 020.050 entitled "Public Complaints and Allegations Related to the Delivery of HIV or STD Programs; adopts the policy by reference; and makes the Bureau of HIV and STD Prevention responsible for providing copies of this policy to any person who shall request it.

The proposed amendment to §98.41 relating to client eligibility requires laboratory or physician documentation of HIV infection or AIDS diagnosis; requires the individual to maintain an abode within the state and to have intent to maintain residency; does not allow an individual to claim residency in any other state or country; requires the parent, guardian, managing conservator, or legally dependent spouse of any person for whom they are legally responsible and who is making application into a program covered under this subchapter to meet the program's criteria for residency; allows the delivery of certain specified services to family members affected by another family member who is infected with the HIV disease; places the responsibility for updating residence information on the approved applicant and removes this responsibility from the provider; requires any client who must reapply with a provider to receive services to submit a new application containing at minimum the eligibility requirements contained in this section;

allows the program to restrict providers from granting conditional eligibility; allows providers to grant conditional eligibility to an applicant when the applicant's full eligibility is pending collection of documentation and to an applicant whose application is under approval review by the provider; restricts a provider from granting conditional eligibility to any person the provider knows to not be fully eligible to receive services; and deletes the reference to §98.29 of this chapter relating to modification, suspension, or termination of provider status.

The proposed amendment to §98.42 of this subchapter deletes the department's responsibility to provide or approve client application forms, requires providers to provide an English translation of all required documentation when non-English documents are submitted by an applicant for services, eliminates the provider's ability to deny services to any individual who fails to provide an English translation of documentation required for eligibility determination, and requires providers to update client application files annually.

The proposed amendment to §98.43 requires documents used to verify Texas residency to be current or recent and to contain the client's name and address, removes responsibility from the provider for periodically verifying client residency as §98.41 of this chapter requires the client to inform the provider of any changes in the client's residency, removes the department's responsibility for providing providers with sources to document residency as a list of possible sources is contained in amended §98.43 relating to documentation of residency.

The proposed amendment to §98.44 corresponds to amendments proposed in §98.43 relating to documentation of residency and §98.41 relating to client eligibility; expands the reasons for which a client may be denied, modified, suspended, or terminated from the program to include client violations of department or provider policies and client actions which create a hostile environment or threaten the health or safety of others; and changes the process under which a client may dispute a provider's decision to the processes proposed in §98.23 relating to client complaints and to the exceptions from the appeals process proposed in §98.30.

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

Mr. Powel has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections will result in a more expeditious contract execution process between the department and providers, and improve the delivery of service programs to clients on the local level. There is no anticipated additional cost to small businesses nor to persons who may be required to comply with these sections. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Sharilyn K. Stanley, M.D., Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 490-2525. Comments will be accepted for 30 days following publication in the *Texas Register*.

Division 1. General Provisions

25 TAC §§98.1-98.4, 98.6, 98.8

The amendments are proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for treatment, health, and social service programs for persons with HIV infection; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The amendments affect the Health and Safety Code, Chapter 85.

§98.1. Introduction.

The purpose of these sections is to establish a system for the provision of services by providers to clients as authorized in Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations [~~the Human Immunodeficiency Virus Services (HIVS) Act, Texas Civil Statutes, Article 4419b-4, Article 2]. This subchapter is adopted under the authority of the Health and Safety Code [HIVS Act and the current General Appropriations Act].~~

§98.2. Definitions.

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

(1) Act—Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85 [~~(Texas Civil Statutes, Article 4419b-4, Acts of the 71st Legislature, Chapter 1195, 1989 (Senate Bill 959))].~~

(2) AIDS—Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention [~~of the United States Public Health Service].~~

(3) Applicant—A nonprofit community organization or other entity that applies to the department for approval to become a provider.

(4) Board—The Texas Board of Health.

(5) Case management—The assessment of a client's overall service needs and the development and implementation of a course of action or plan for meeting those needs. Case management should be family centered, community-based, interdisciplinary, and comprehensive. It is intended to assist those clients who need a variety of services. [~~Activities which are integral to the provision of case management include:] A range of client-centered services that link clients with health care, psychosocial and other services, and insure timely, coordinated access to medically appropriate levels of health and support services, continuity of care, ongoing assessment of the client's and other family members' needs and personal support systems, and inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. Key activities include:~~

(A) initial comprehensive assessment of the client's needs and personal support systems; [advocacy;]

(B) development of a comprehensive, individualized service plan; [mutual goal setting;]

(C) coordination of the services required to implement the plan; [monitoring;]

(D) client monitoring to assess the efficacy of the plan; and [education;]

(E) periodic re-evaluation and revision of the plan as necessary over the life of the client. [information and referral; and]

~~[(F) family empowerment (activities to assist the client/family to gain skills and independence in problem-solving, self-advocacy, and management of the human service system; and recognize and support the right of each individual to take control of his/her own life and destiny).]~~

(6) Client—An individual who, under these sections, is determined by a provider to be eligible for services.

(7) Commissioner—The commissioner of health.

(8) Communicable Disease Prevention and Control Act—The Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

(9) Consortium—Established under Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990. A consortium is a non-incorporated, single coordinating organization responsible for preparing the HIV service plan which is the basis for the application to the State for funds to assure HIV treatment and services within an HSDA. The plural of consortium is "consortia."

~~[Counseling —The provision of written and/or oral communication between a client or group of clients and a knowledgeable person in an effort to assist the client to achieve the ability to satisfactorily cope with a problem or problems.]~~

(10) Department—The Texas Department of Health.

(11) Family—A group of two or more persons related by birth, marriage, or adoption who reside together, or one or more persons living with another person or persons who are determined to be important to their care or well being. All such [related] persons are considered as members of one family provided the family member is not compensated for providing care to the person with HIV.

(12) HIV—Human immunodeficiency virus infection as defined by the Centers for Disease Control and Prevention [~~of the United States Public Health Service].~~

(13) HSDA—HIV services delivery area.

(14) Legally responsible person—A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself/herself.

~~[Medical transportation —Transportation services that are required to obtain appropriate and timely AIDS/HIV services for clients.]~~

(15) Minor—A person who has not reached his or her 18th birthday and who has not been emancipated by a [~~had the disabilities of minority removed in]~~ court or who is not married or recognized as an adult by the State of Texas.

(16) Person—An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(17) Program—The HIV Services Grant Program established under Health and Safety Code, Chapter 85, Subchapter B [~~created by Acts of the 71st Legislature, Chapter 1195, Article 2, 1989 (Texas Civil Statutes, Article 4419b-4, Article 2)].~~

(18) Provider—A person that has been approved by the department and that has entered into a contract with the department or with a contractor of the department to deliver services purchased

by the department to clients for the purposes of Health and Safety Code, Chapter 85, Subchapter B [the Act, Article 2].

(19) Region—A public [Public] health region of the department, established under Health and Safety Code §121.007.

(20) Request for application (RFA)—A non-competitive solicitation providing guidance and instructions issued by the department to current providers interested in renewing their contract to deliver purchased services to carry out the purposes of Health and Safety Code, Chapter 85, Subchapter B.

(21) Request for proposal (RFP)—A competitive solicitation providing guidance and instructions issued by the department to potential providers interested in submitting an application to deliver purchased services to carry out the purposes of Health and Safety Code, Chapter 85, Subchapter B [the Act, Article 2].

(22) Services—[Individual or group counseling and other social services; home health care; medical transportation; temporary shelter; provision of food or clothing at no cost or reduced cost; and other] Activities [activities] determined by the department in the approval and contracting process as appropriate to carry out the intent of Health and Safety Code, Chapter 85, Subchapter B [the Act, Article 2].

(23) STD—Sexually transmitted diseases.

{Support —The contribution of money or services necessary for a person's maintenance including food, clothing, shelter, transportation, and health care.}

(24) Texas resident—An individual who [is] physically resides [present] within the geographic boundaries of the state. [and who:]

{(A) has an intent to remain within the state, whether permanently or for an indefinite period;}

{(B) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box); and}

{(C) does not claim residency in any other state or country; or}

{(D) is under 18 years of age and his/her parent(s), managing conservator, or guardian is a bona fide resident of Texas;}

{(E) is a person residing in Texas and his/her legally dependent spouse is a bona fide resident of Texas; or}

{(F) is an adult residing in Texas and his/her legal guardian is a bona fide resident of Texas.}

§98.3. *Forms.*

Forms approved [which have been developed] by the department [Texas Department of Health] for use in the program will be provided to applicants, providers, and clients as necessary.

§98.4. *Funds.*

(a) The board [Texas Board of Health] may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer the program [Human Immunodeficiency Virus Services Act], except as provided by other law.

(b) Funds may not be used to make cash payments or reimbursements to clients.

§98.6. *General Program Requirements.*

(a) As authorized by Health and Safety Code, Chapter 85, Subchapter B [the Human Immunodeficiency Virus Services Act] the

board [Texas Board of Health], in these sections, establishes the [has established an HIV] program [in the Texas Department of Health (department)] to provide for the delivery of services to clients.

(b) The department through the grant process shall endeavor to [provide for the delivery of services to those populations which demonstrate unmet needs because of their inaccessibility and/or unavailability. The grant process shall be structured to meet these unmet needs according to criteria that include]:

(1) coordinate [eoordination of] the use of federal, local, and private funds;

(2) encourage community level planning and [encouragement of] community-based service provision [and case management];

(3) address [addressing of] needs that are not met by other sources of funding;

(4) provide [provision of] funding as extensively as possible across regions of the state [in amounts that reflect regional needs];

(5) encourage [encouragement of] cooperation among local providers;

(6) prevent [prevention of] unnecessary duplication of services within a community; and

(7) make available [availability of] health resources in a community.

§98.8. *HIV Program Review.*

(a) The department will establish a program review system to evaluate the delivery of client services. The review system will allow for monitoring of and technical assistance to the providers.

{(a) HIV program (program) review activities will be accomplished through monitoring systems developed to ensure the delivery of appropriate AIDS/HIV services.}

(b) For economies of scale, and with the consent of the commissioner [of health], the program may contract for concurrent or retrospective program reviews.

{(c) The Texas Department of Health (department) will establish a program review system to evaluate the delivery of AIDS/HIV services. The program review system will allow for technical assistance to the providers.}

(c) {(d) The department will require providers to report to the department information pertaining to performance defined by the department. [:]

{(1) the demographic information on eligible individuals;}

{(2) the number of clients receiving services and costs of service per client;}

{(3) the fiscal and financial management reports of expenditures;}

{(4) the program accomplishments;}

{(5) an annual report on applicants ineligible for services; and}

{(6) a report on the networking and coordination of services with other providers.}

{(e) Other health related data may be required by the department; however, the provider will be given 60 days advance notice prior to the end of the contract term.}

(d) ~~(f)~~ Each year, the ~~[The]~~ department shall ~~[annually]~~ prepare a report ~~that includes [that is available to the public consisting of]~~ summarized data regarding the type, level, quality, and cost-effectiveness of services provided that will be made available to the public ~~[during the preceding fiscal year]~~.

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

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814581

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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



Division 2. AIDS/HIV Service Providers

25 TAC §§98.21-98.25, 98.27, 98.28, 98.30, 98.31

The amendments and new section are proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for treatment, health, and social service programs for persons with HIV infection; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The amendments and new section affect the Health and Safety Code, Chapter 85.

§98.21. *Who May Apply for Funds from the Department [To Become a Provider].*

(a) To receive funds directly from the department to deliver client services ~~[become a service provider]~~, a person must be a governmental, public~~[-]~~ or private nonprofit entity located within the State of Texas, including:

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

(b) An individual is not eligible to receive funds directly from the department for the provision of services under this subchapter; unless the scope of work is contracted through a professional services or consulting contract [may not become a provider].

(c) Persons that receive funds directly from the department to deliver services to clients may enter into contracts with subrecipients with prior approval from the department unless restricted or otherwise prohibited.

§98.22. *Provider Application; Selection; Contract Process to Receive Funds Directly from the Department.*

(a) To administer the program effectively and to receive the maximum benefits from available funds, the ~~department [Texas Department of Health (department)]~~ shall contract for services using an RFP process [on a request for proposal (RFP)].

(b) The program may expedite the renewal of contracts with providers using an RFA process so that services may continue to be provided to clients without experiencing gaps in service.

(c) ~~(b)~~ The department shall publish a public notice of the RFP in the Texas Register at least 14 ~~[30]~~ days prior to the date on which the application is due. Notice of the availability of funds shall be posted on the Electronic State Business Daily in compliance with Title 10, Texas Administrative Code, Chapter 199. Local published notices or direct solicitation ~~[contact]~~ by the department with potential applicants may [will] also be used [utilized].

(1) ~~(e)~~ The [After public notice has been given the] department will forward the application packets [packet] to interested persons within three working days of a request being received in the department's Bureau of HIV and STD Prevention [HIV Division].

~~[(d) Complete applications at a minimum must include:]~~

~~[(1) a description of the objectives established by the applicant for the conduct of the program during the contract period;]~~

~~[(2) documentation that the applicant has consulted with appropriate local health department or public health district officials, health authority, community groups, and individuals with expertise in HIV education or treatment and a knowledge of the needs of the population to be served or as specified in the RFP or renewal documents;]~~

~~[(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met;]~~

~~[(4) assurances that priority will be given to the provision of services to eligible individuals with low income; and]~~

~~[(5) any other information required by these sections or requested by the department in the application package.]~~

(2) ~~(e)~~ Regional public hearings will be conducted as required by Health and Safety Code, Chapter 85, Subchapter B [in the region in which the applicant(s) is located before awarding an initial grant, or grants totaling in excess of \$25,000].

~~[(1) At least 10 days before such a public hearing, the department shall give notice to each state representative and state senator who represents any part of the region in which any part of the contracted funds will be expended.]~~

~~[(2) Public hearings will not be required for the renewal of a contract.]~~

(3) ~~(f)~~ Complete applications for funding will initially be reviewed by the department's Bureau of HIV and STD Prevention, [HIV Division and] other departmental staff, and by a review panel composed in such a manner that individual panel members:

(A) [(1)] are knowledgeable and/or experienced [involved] with service [health care] delivery [but are not employees of the department]; and

(B) [(2)] are not members of, employed by, or otherwise associated with a particular application under review by a particular panel.

(d) At minimum, applications submitted to the department must be complete and fulfill the requirements of the RFA or RFP.

(e) After review, the Bureau of HIV and STD Prevention will make the final selection of providers.

[(g) After the review described in subsection (f) of this section, the HIV Division will make the final selection of providers in the HIV Program (program); preference will be given to consortia of health care and community-based organizations which can develop or have developed comprehensive ambulatory community and home-

based HIV support programs offering appropriate and compassionate care at reduced costs.]

(f) [(h)] Applicants approved by the program must execute contracts with the department prior to receiving any funds from the department for the approved activities. Applicants that are not selected will receive written notification to that effect from the department within 30 days after the awards have been approved [and will be given the opportunity for an informal reconsideration conducted under the provisions of §98.28 of this title (relating to Denial of an Application To Provide AIDS/HIV Services; Procedure)].

(g) [(i)] A copy of amendments to program rules adopted during the term of the contract will be sent to each contractor at the time of the rule's final adoption by the board [Board of Health]. Each contractor must acknowledge in writing the receipt of the copy and provide an assurance that they have read and understand the content of the amendments and will comply with them as part of their contractual obligation.

[(j)] A provider must agree to deliver the number and/or type of services during the contract period designated and accepted by the department.]

[(k)] The program may expedite the renewal of contracts with providers so that services may be provided to clients without gaps in service.]

[(1)] An abbreviated application format will be used to the extent deemed possible by the department.]

[(2)] Applications for funding may be reviewed and approved by the department based upon the applicant's prior history of compliance with the applicable law and rules, its satisfactory performance of contract provisions, and the quality of the services being provided. The quality of services provided will be verified by evaluations made by the department.]

(h) [(4)] Contracts executed between the department and providers under this section are governed by the requirements in the Uniform Grant [and Contract] Management Standards (UGMS) [(UGCMS)], 1 Texas Administrative Code §§5.141-5.167.

(i) [(m)] A provider must give assurances in the contract that the provider will abide by the requirements of [the Human Immunodeficiency Virus Services Act,] the UGMS [(UGCMS),] and these sections.

§98.23. *Client Complaint, Internal Reconsideration, Due Process Requirements.*

(a) Client complaints.

(1) To obtain and continue provider status, an applicant for approval or a provider must have in place a procedure to resolve client complaints in a manner that is timely and that assures confidentiality to the extent possible. [in an effective procedure. This procedure shall be made available to all clients as described in §98.31(b)(4)(A) of this title (relating to Public Complaints) and will be posted in a prominent place in the provider's facility. At a minimum, the complaint procedure must include:]

(A) The procedure shall be made available to all clients and will be posted in a prominent place in the provider's facility.

(B) The procedure must protect the confidentiality of the information pertaining to the parties involved to the extent allowed by law.

(C) The complaint resolution procedures must include at least an opportunity for an informal reconsideration of the

provider's decision to deny an individual's application for services and due process procedures for the denial, suspension, or termination of the client from the provider's program or modification of the level of benefits the client is eligible to receive; other than services delivered by medical professionals.

(D) The procedure shall instruct individuals with complaints regarding regulated or licensed medical professionals and service providers of their right to direct their complaints to the appropriate regulatory agency.

[(A)] an assurance that a timely and impartial complaint investigation procedure is available;]

[(B)] an assurance that the provider will attempt to resolve client complaints;]

[(C)] an assurance that the provider has in place an internal complaint review procedure for client complaints; and]

[(D)] that the results of the investigation are provided to all parties in the complaint.]

(2) Failure of an applicant or provider to provide a complaint procedure for clients is grounds for the denial of an application or imposition of a sanction on the provider as deemed appropriate by the department [; or modification, suspension, or termination of provider status].

[(b)] Internal reconsideration and due process procedures. The applicant or provider must assure that provider has in place procedures for the resolution of conflicts between the provider and an applicant for services or client.]

[(1)] The conflict resolution procedures must include at least an opportunity for an informal reconsideration of the provider's decision to deny an individual's application for services and due process procedures for the denial, modification, suspension, and termination of the client status.]

[(2)] Unless granted variance by the commissioner of health (commissioner) in accordance with subsection (c) of this section, the procedures must provide at least the protection to the client that the Texas Department of Health's (department) informal reconsideration and due process hearing procedures afford to the provider.]

[(c)] Variance. A provider may apply to the commissioner in writing for a variance from the requirements of subsection (b)(2) of this section.]

[(1)] In considering the application for the variance, the commissioner of health may consider:]

[(A)] the personnel and other resources available to the applicant or provider; and]

[(B)] the nature of the services delivered by the provider.]

[(2)] The commissioner's decision will be in writing and given to the provider by mail.]

(b) [(d)] Due process procedure. The due process procedure must include at least:

(1) a timely written notice to the applicant for services or client of the basis of the provider's decision and disclosure of the reasons upon which the decision is taken;

(2) an opportunity for the applicant or client to be represented by counsel at the client's expense;

(3) an opportunity for the applicant or client to examine the documentary evidence, if any;

(4) an opportunity for the applicant or client to cross-examine witnesses; and

(5) a written decision rendered by an impartial referee.

(c) [e] Opportunity for an informal reconsideration. Failure of a provider to afford an individual [; whose application for services was denied; an opportunity for an informal reconsideration; or failure to afford a client, aggrieved by the provider's decision to modify, suspend, or terminate services,] the opportunity to participate in a due process procedure is grounds for termination of the provider's [providers approval and] contract [cancellation].

(d) [f] Informal hearing procedures. A provider may adopt the board's [Texas Board of Health's (board)] informal hearing procedures in §§1.51-1.55 of this title (relating to Informal Hearing Procedures) to satisfy the requirement for a due process procedure. A copy of the board's informal hearing procedure may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin, Texas 78756.

§98.24. Confidentiality.

(a) Confidentiality of all records is essential. All information obtained in connection with the examination, care, or services provided to any client under a program[;] which is carried out through a contract under these sections, shall not, without the client's consent, be disclosed[;] except as may be necessary to provide services to the client, or as may be required by law. [Information derived from any HIV Program (program) may be disclosed:]

{(1) in statistical or other summary form; or}

{(2) in case reports, but only if the identity of the individuals diagnosed or provided care as described in the report is not disclosed and cannot be discerned.}

(b) To obtain and continue provider status, all applicants or providers must have a policy in place to protect client confidentiality and must assure the department [Texas Department of Health] that each individual participating in the provider's activities has been informed of the policy and the fact that civil and criminal penalties exist in the Communicable Disease Prevention and Control Act for a person who commits the offense of violating the confidentiality of persons[; as protected under the provisions of the Act].

(c) Failure of an applicant or a provider to have a confidentiality policy and/or [and] procedure in place is grounds for denial of an application or termination of the provider's [approval and] contract [cancellation].

§98.25. Model Workplace Guidelines.

(a) To obtain and continue provider status, all applicants or providers must have a policy in place that is consistent with [and at least as comprehensive as] the model [guidelines for] HIV/AIDS workplace guidelines developed by the department and authorized by Health and Safety Code §85.012 [policies and education programs adopted by reference in §97.19 of this title (relating to Model HIV/AIDS Workplace Guidelines) for direct care providers and clients]. Copies of the guidelines may be obtained from the Texas Department of Health, Bureau of HIV and STD Prevention [Public Health Promotion Division], 1100 West 49th Street, Austin, Texas 78756-3199 [78756].

(b) Failure of an applicant or a provider to have workplace policy/procedures [guidelines and procedures] in place covering this

information is grounds for denial of an application or termination of the provider's [approval and] contract [cancellation].

§98.27. Denial of Application[; Modification, Suspension, Termination of Provider Approval; Criteria].

(a) The department [Texas Department of Health (department)] may, for cause, deny the application and [modify, suspend, or terminate the] approval of a provider after written notice of the proposed action [;] and written notice of an opportunity to dispute the denial has [for an informal reconsideration or an opportunity for a due process have] been given to the provider.

(b) An application may be denied by the department in accordance with criteria published in the RFP or RFA. [if the:]

{(1) applicant has not submitted a complete application;}

{(2) applicant is not an entity listed in §98.21 of this title (relating to Who May Apply for Provider Status);}

{(3) applicant has not provided the assurances, policies, procedures required by these sections relating to client confidentiality, client complaints, informal reconsideration, due process, and workplace guidelines; and}

{(4) applicant fails or refuses to execute a contract with the department.}

{(c) Provider status may be modified, suspended, or terminated for:}

{(1) providing false or misleading information which is material to the continuance of provider status;}

{(2) failure of the provider to perform in accordance with the requirements of the Human Immunodeficiency Virus Services Act and the applicable provisions of the General Appropriations Act;}

{(3) failure of the provider to perform in accordance with these sections;}

{(4) failure of the provider to perform in accordance with the provisions of the contract; or}

{(5) failure of the provider to perform in accordance with the rules prescribed in the Uniform Grants and Contracts Management Standards (UGCMS), 1 Texas Administrative Code §§5.141-5.167.}

{(d) The department may suspend or cancel payment for services delivered if false or fraudulent requests for payments are submitted by a provider.}

{(e) A provider's contract may not be terminated during the pendency of due process hearing. Payments due to be paid to providers may be withheld during the pendency of a hearing, and payments shall resume if the final determination is in favor of the provider.}

§98.28. Procedure to Dispute the Department's Decision to Deny an Application.

(a) An applicant may request review of the department's action that denies the award of a contract to that applicant after response to a department solicitation.

(b) An applicant may dispute the denial by giving notice of the dispute in writing, within three working days of receiving the notice, to the Texas Department of Health, Bureau of HIV and STD Prevention, 1100 W. 49th, Austin, Texas, 78756-3199. This notice may be mailed or faxed.

(c) The Bureau of HIV and STD Prevention will process a notice of dispute in accordance with the department's administrative

policy XO-0110 entitled "Protest Of Application Or Bid Denial For Client Services Contract." The program adopts this document by reference. Copies may be requested from the department by writing to the address in subsection (b) of this section.

§98.30. *Exceptions from Dispute [Appeals] Procedure.*

The department [Texas Department of Health (department)] is not required to offer an opportunity to dispute the decision to deny an application, or to modify, suspend or terminate provider status [an informal reconsideration or an informal hearing for the denial, modification, suspension, or termination of provider status], if the department's actions result from the exhaustion of funds appropriated to the department for the administration of Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations [the Human Immunodeficiency Virus Services Act, Article 2].

§98.31. *Public Complaints.*

[(a) Filing of complaints.]

(a) [(1)] Anyone may complain to the department [Texas Department of Health (department)] alleging that a provider has violated a statute or one of the rules of this subchapter. A person wishing to file a complaint may [to complain about an alleged violation of the rules shall] notify the Bureau of HIV and STD Prevention [the director of the HIV Division].

(b) [(2)] The notification of a complaint may [must] be expressed orally to the department or in writing. Written complaints should be [and] mailed to the Chief, Bureau of HIV and STD Prevention [Director, HIV Division], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Written complaints are subject to the Open Records Act, Government Code, Chapter 552.

[(3) Upon receipt of a complaint, the director shall send an acknowledgment letter to the complainant within 15 days, if the complainant is identified to the director.]

[(b) Investigation of complaints.]

[(1) The department shall not investigate complaints which lack sufficient information. The department reserves the right to request additional, verifiable information from the complainant. If the additional information is not provided within 30 days, the department may close the complaint file without further action.]

[(2) The department will not investigate complaints regarding the personal activities of employees of a provider.]

[(3) Anonymous complaints shall be investigated by the department, provided sufficient, verifiable information is submitted.]

[(4) Written complaints received by the HIV Division will be screened to determine the appropriate action.]

[(A) If it is determined to be a client complaint on a matter not involving clinical, or direct client care, §98.23 of this title (relating to Client Complaint, Internal Reconsideration, Due Process Requirements) will apply.]

[(B) If applicable, other complaints will be referred to the appropriate licensing and/or regulatory authority for investigation.]

[(C) Any complaints on matters involving clinical, or direct client care, not covered by subparagraph (A) or (B) of this paragraph, will be investigated by the appropriate department staff.]

[(5) The identity of the person(s) involved in filing the complaint and the person on whose behalf the complaint is filed will

be privileged information of the department, to the extent allowed by law.]

[(e) Actions after investigation. The department shall have 60 days after receipt of complaint (or of additional information requested) to investigate the complaint. If at the end of this 60-day period the department has been unable to complete its investigation, the department will so notify the complainant, if known, in writing. The department will then have an additional 60 days to complete its investigation. After investigation, the department shall take one of the following actions.]

[(1) The department may determine that an allegation is groundless and dismiss the complaint.]

[(2) The department may determine that a provider has violated a statute or one of the rules of this subchapter and shall issue a written warning to the provider to cease the activity and/or take corrective action within a specified period of time.]

[(A) If the provider complies with the written warning, the department shall close the complaint file.]

[(B) If the provider fails to comply with the written warning, the department may modify, suspend, or terminate the provider status in accordance with §98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure).]

[(d) Notification of results of investigation. Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the AIDS Services Advisory Committee, the complainant, and the accused party.]

(c) The Bureau of HIV and STD Prevention will process complaints in accordance with the Bureau of HIV and STD Prevention policy 020.050 entitled "Public Complaints and Allegations Related to the Delivery of HIV or STD Programs." Copies may be requested from the department by writing to the address listed in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814582

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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

◆ ◆ ◆
25 TAC §§98.26, 98.28, 98.29

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

The repeal is proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for treatment, health, and social service programs for persons with HIV infection; and under the

Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The repeal affects the Health and Safety Code, Chapter 85.

§98.26. *Payment for Services.*

§98.28. *Denial of an Application To Provide AIDS/HIV Services; Procedure.*

§98.29. *Modification, Suspension, or Termination of Provider Status; Procedure.*

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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



Division 3. AIDS/HIV Services; Clients

25 TAC §§98.41-98.44

The amendments are proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for treatment, health, and social service programs for persons with HIV infection; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The amendments affect the Health and Safety Code, Chapter 85.

§98.41. *Client Eligibility Requirements.*

(a) Full eligibility.

(1) An individual will be eligible to receive services when the individual receives provider approval after meeting all of the following requirements except as provided in paragraph (2) of this subsection:

(A) have laboratory or physician documentation of [at least an] HIV infection or AIDS diagnosis;

(B) is a [bona fide] resident of Texas, and furnishes documentation of residency as required by §98.43 of this title (relating to Residency; Documentation of Residency). [; and] (An individual is considered to be a Texas resident if:

(i) The individual actually maintains an abode within the state (i.e., house or apartment, not merely a post office box) and has an intent to remain within the state, whether permanently or for an indefinite period; and

(ii) The individual does not claim residency in any other state or country; or

(iii) The individual is under 18 years of age and his/her parent(s), managing conservator, or guardian is a bona fide resident of Texas; or

(iv) The individual is a person residing in Texas and his/her legally dependent spouse is a bona fide resident of Texas; or

(v) The individual is an adult residing in Texas and his/her legal guardian is a bona fide resident of Texas.

(C) makes application through a [the] provider in the HSDA.

(2) Family members [and significant others] are exempt from eligibility requirements for paragraph (1)(A) [(1)] of this subsection for purposes of receiving certain specified [counseling] services which provide a direct or indirect benefit to the person with HIV or AIDS.

(3) To maintain eligibility [for receipt of services], a client must inform the provider of any changes in residency or other information required by the provider which is necessary to provide services. [meet the requirements of paragraph (1) of this subsection; maintain Texas residency; and, upon demand, furnish evidence of residency to the provider or the department in accordance with §98.43 of this title (relating to Residency; Documentation of Residency);]

(4) To regain eligibility for receipt of services, a former client must reapply for services under the eligibility requirements outlined in paragraph (1) of this subsection in addition to any service eligibility requirements the provider may have [in cases where eligibility has lapsed].

(b) Conditional eligibility.

(1) Conditional eligibility is available pending final approval of an application for services.

(A) (No change.)

(B) Conditional eligibility may be granted, unless not allowed by the program, only for one or more of the following reasons:

(i) full eligibility is pending collection of the applicant's required documentation;

(ii) translation of the applicant's required documentation into English; or [and]

(iii) review of the application by the provider and the provider's final decision to grant or refuse full eligibility to the applicant is being considered.

(2) A provider may not grant conditional eligibility to any applicant that the provider knows [or should know] is not and will not be fully eligible for services.

(3) The contract of a provider may be terminated and provider approval revoked [in accordance with §98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure)] if a provider grants conditional eligibility to an applicant that the provider knows [or should know] is not and will not be fully eligible for services.

§98.42. *Applications.*

(a) (No change.)

(b) A complete application shall consist of all of the following:

(1) a properly completed, signed, and original application for services; on a form provided or approved by the department;];

(A) the application must be signed by the applicant;

(B) an application signed with a "mark" by the applicant must be attested to by a notary; or

(C) if a member of the applicant's immediate family signs for the applicant, the reason they are doing so must be stated on the application;

(2) documentation [which is acceptable to the department to provide evidence] of [bona fide] Texas residency (see §98.43 of this title (relating to Residency; Documentation of Residency); and

(3) laboratory or physician documentation of [a statement signed by the individual or a licensed physician that the applicant has an] HIV infection or AIDS[-] diagnosis; and

(4) financial data if the information is deemed necessary to determine eligibility for a particular service.

(c) All documentation required for eligibility determination, as provided in subsection (b) of this section, must be provided in English or have an accurate English translation attached to the document. [English translations may be provided by the applicant or the provider taking the application.]

{(d) An application shall be deemed incomplete for any one of the following reasons:}

{(1) failure to provide information requested in the application form;}

{(2) lack of supporting documents;}

{(3) lack of, or improper signatures;}

{(A) the application must be signed by the applicant;}

{(B) an application signed with a "mark" by the applicant must be attested to by a notary; or}

{(C) if a member of the applicant's immediate family signs for the applicant, the reason they are doing so must be stated on the application;}

{(4) lack of legal residency documentation;}

{(5) failure to provide financial data; or}

{(6) failure to provide an English translation of all documentation required for eligibility determination.}

{(e) Incomplete applications will be returned to the submitting applicant for correction, with the deficiencies noted.}

(d) {(f)} If the application is incomplete, the provider may not determine the [applicant's] applicant to be eligible [eligibility for the client] to receive services. [The eligibility date will be determined when a properly completed, signed, and notarized, if necessary, application is received.] Services may not begin until an eligibility date has been established unless provided under §98.41(b) of this title (relating to Client Eligibility Requirements).

(e) {(g)} The eligibility date will be based on the date the provider receives a complete application for services as specified in this section.

(f) Providers must update client application files annually.

§98.43. *Residency; Documentation of Residency.*

(a) (No change.)

(b) The provider must require [and the client must present] documentation of Texas residency which contains a client's name and address during the provider's review of the client's application

for services. Documents that may provide evidence of residency include:

(1) current documents issued by the state or federal government, e.g., driver's license or identification card issued by the Texas Department of Public Safety; a motor vehicle registration [or automobile registration form]; a [current] Texas voter registration card; or a [current] Texas Medicaid card;

(2) recent documents relating to the applicant's income, e.g., [a recent] payroll check; retirement or social security check; or disability check; and

(3) recent documents relating to the applicant's living expenses, e.g., rental or lease receipts; utility payment receipt.

(c) (No change.)

{(d) A provider must verify residency periodically during the receipt of services and if requested by the provider, a client must provide additional documentation.}

{(e) Providers may obtain a list of possible sources of documentation of residency from the department.}

§98.44. *Denial of Application; Modification, Suspension, or Termination of Client Benefits; Criteria.*

(a) Individuals applying for services or clients already receiving services from a provider will have their application denied or services modified, suspended, or terminated by the provider for any of the following reasons.

(1) Services will be denied, modified, suspended, or terminated if:

(A) the person is not a [bona fide] resident of the state;

(B) the person fails or refuses to provide the [periodic] documentation [of residency] required in §98.41 of this title (relating to Client Eligibility Requirements);

{(C) the person does not have at least an HIV infection; or}

(C) [(D)] the client notifies the provider in writing that he/she no longer wants to receive services.

(2) Services may be denied, modified, suspended, or terminated if:

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

(C) the client has not requested or used [utilized] services during any period of 12 consecutive months;

(D) program funds are curtailed; {or}

(E) funds allocated for payments on behalf of the client are exhausted; [-]

(F) the client violates TDH or provider policies; or

(G) the client's actions create a hostile environment or threaten the health or safety of others.

(b) Denial, modification, suspension, or termination of services to a client will be governed by the [provider's informal reconsideration and due process] procedures required by §98.23 [§98.28] of this title (relating to Client Complaint, Internal Reconsideration, Due Process Requirements [Denial of an Application To Provide AIDS/HIV Services; Procedure]), [§98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure);] and §98.30 of this title (relating to Exceptions from Dispute [Appeals] Procedure).

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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



Subchapter B. HIV Prevention [Education Grant Programs

The Texas Department of Health (department) proposes repeal of §§98.85, 98.87-98.89, and amendments to §§98.61-98.64, 98.66; 98.68; 98.81-98.84; 98.86; 98.90; and new §§98.87 and 98.89 concerning the administration of human immunodeficiency virus (HIV) prevention, education, and risk management. The proposed rules involve a change in the title of the chapter and in the title of this subchapter; revisions in the format and content of text within these sections to improve understanding; reflect statutory and department policy changes; and are necessary to clarify contractor performance requirements and to improve the delivery of HIV prevention programs in Texas.

The changes in the title of this chapter to "HIV and STD Prevention" and in the title of this subchapter to "HIV Prevention Grant Program" both reflect the department's mission and the purpose of this program. Specifically, proposed amendment to §98.61 reflects the codification of Texas law and removes the General Appropriations Act as the one authority under which the subchapter is adopted.

The proposed amendment to §98.62 reflects codification of Texas laws, an amended federal agency name, replaces the definition "education" with a new definition "prevention" being proposed to include education; an amended definition for "HIV" and "Provider" to include grant subrecipients; a new definition for "Request for application (RFA)" to cover non-competitive solicitation of current providers interested in renewing their contract with the department; an amendment to "Request for proposal (RFP)" to clarify the solicitation as a competitive process, and a new definition for "Services" which covers prevention activities the department may approve.

Changes to §98.63 effect the department's responsibility regarding forms used in the program from responsibility for development of the forms to approving forms.

Proposed amendment to §98.64 corresponds to the defined terms, and a new subsection (b) is proposed to restrict direct cash payments or reimbursements to clients.

The proposed amendment to §98.66 reflects codification of Texas law; corresponds to defined terms; and improves understanding of the department's role as coordinator not provider of services.

The proposed amendment to §98.68 better clarifies the department's role as evaluator of services and allows the department more flexibility in defining contractor reporting requirements;

corresponds to defined terms; and reflects the correct title of a referenced federal document.

Proposed amendment to §98.81 clarifies that individuals are not eligible to receive funds directly from the department for the provision of services under this subchapter; and clarifies that agencies which receive program funds directly from the department may enter into contracts with subrecipients unless otherwise restricted.

Section 98.82 addresses the department's contract process; changes wording to better correspond to the defined terms; describes the competitive request for proposal process; allows the program to expedite the renewal of contracts by using a non-competitive request for application process; requires the department to post notice of availability of on the Electronic State Business Daily in compliance with Title 10, Texas Administrative Code, Chapter 199; allows the department to directly solicit potential applicants; clarifies that interested persons will be forwarded an application packet within three working days of their request being by the department; removes existing specific details of a complete application and allows the department to establish the application requirements in the department's request for application or request for proposal; replaces the public hearing process for awarding grants totaling in excess of \$25,000 by applying the same requirements contained in the Health and Safety Code, Chapter 85, Subchapter B; replaces the HIV Division with the Bureau of HIV and STD Prevention in the application review process; clarifies that the internal review panel composed by the department will consist of persons knowledgeable and/or experienced with prevention programs rather than simply being involved with education programs; places the responsibility of final selection of providers on the Bureau of HIV and STD Prevention rather than on the HIV Division; removes preference given to applicants whose primary purpose is serving persons under 18 years of age as the department strives to contract with agencies who best address the needs identified in their community developed HIV prevention plans, inclusive of services to adolescent populations; requires approved applicants to execute contracts with the department prior to receiving any funds from the department for the approved activities; removes the process for appealing the department's decision to not fund from this section and places it in §98.86; reflects a change in the name of the Uniform Grant and Contract Management Standards to the Uniform Grant Management Standards; and removes the Human Immunodeficiency Virus Services Act from the list of assurances a contractor must abide.

The proposed amendment to §98.83 removes current circumstances under which confidential information may be disclosed and requires providers to maintain confidential information according to law; corresponds to the defined terms, and allows the department to cancel a provider's contract for failure to have a confidentiality policy and/or procedure in place.

Proposed amendment §98.84 requires providers to have a policy in place that is consistent with the workplace guidelines developed by the department and authorized by the Health and Safety Code §85.012; removes the reference to §97.19; replaces the Public Health Promotion Division with the Bureau of HIV and STD Prevention as the correct program from which copies may be obtained of the guidelines; and requires providers to have a workplace policy in place, failure of which may lead to termination of the provider's contract.

The department proposes the repeal of §98.85 (relating to Payment for Services) as current contract language, the department's general provisions for contracts, and departmental policy address these requirements more thoroughly.

The proposed amendment to §98.86 corresponds to the defined terms; requires the department to provide written notice of the department's proposed action to the applicant for funds when the department has cause to deny the applicant's application; allows the applicant to dispute the department's decision and the department to deny an application in accordance with criteria published in the department's request for proposal or request for application; removes the list of reasons under which an application may be denied and the reasons under which a provider may have their contracting status modified, suspended, or terminated from this section as the process for applying sanctions on a provider and the process for the provider to appeal the department's decision to apply a sanction are addressed in the provider's contract with the department.

Amendment §98.87 changes the process for disputing the department's decision to deny an application to correspond with the department's policy XO-0110 entitled "Protest of Application or Bid Denial for Client Services Contract"; and requires the Bureau of HIV and STD Prevention to provide the department's policy to any applicant requesting a copy.

The proposed repeal of §98.88 (relating to Modification, Suspension, or Termination of Provider Status-Procedure) refers the provider to the provider's contract with the department addressing these issues.

The proposed amendment to §98.89 corresponds to the defined terms and reflects the codification of Texas law.

The proposed amendment to §98.90 (relating to Public Complaints) corresponds to the defined terms in the processing and investigation of public complaints; directs persons wishing to file a complaint to notify the Bureau of HIV and STD Prevention rather than the HIV Division; clarifies that oral or written complaints will be accepted; informs the complainant that written complaints are subject to the Open Records Act of the Government Code, Chapter 552; by removing the current language in the subsections relating to the internal process of receiving, acknowledging, investigating complaints, determining what actions the department shall take, and notifying parties involved in the complaint, replaces those subsections with language that informs the complainant that complaints will be processed in accordance with the Bureau of HIV and STD Prevention policy 020.050 entitled "Public Complaints and Allegations Related to the Delivery of HIV or STD Programs." This amendment stipulates the Bureau of HIV and STD Prevention with the responsibility for providing copies of this policy to any person who shall request it.

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

Mr. Powel has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections will result in a more expeditious contract execution process between the department and providers, and improve the delivery of prevention programs on the local level. There is no anticipated

additional cost to small businesses nor to persons who may be required to comply with these sections. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Sharilyn K. Stanley, M.D., Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 490-2525. Comments will be accepted for 30 days following publication in the *Texas Register*.

Division 1. General Provisions

25 TAC §§98.61-98.64, 98.66, 98.68

The amendments are proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for delivery of HIV education, prevention, and risk reduction programs; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The amendments affect the Health and Safety Code, Chapter 85.

§98.61. Introduction.

The purpose of this subchapter is to establish a system for the provision of education, prevention, and risk reduction programs as authorized by the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations [~~the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b~~]. This subchapter is adopted under the authority of the Health and Safety Code [~~Act and the current General Appropriations Act~~].

§98.62. Definitions.

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

(1) Act—Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85 [~~Texas Civil Statutes, Article 4410b-4 (Chapter 1195, Acts of the 71st Legislature, Regular Session, 1989 (Senate Bill Number 959))~~].

(2) AIDS—Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention [~~of the United States Public Health Service~~].

(3) Applicant—A nonprofit community organization or other entity that applies to the department [~~Texas Department of Health~~] for approval to become a provider.

(4) Board—The Texas Board of Health.

(5) Commissioner—The commissioner of health.

(6) Communicable Disease Prevention and Control Act—Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

(7) Department—The Texas Department of Health.

[~~Education —A program to provide AIDS/HIV education, prevention and/or risk reduction information to individuals or groups.~~]

(8) HIV—Human immunodeficiency virus infection, as defined by the Centers for Disease Control and Prevention [~~of the United States Public Health Service~~].

(9) Person—An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(10) Prevention—A program to provide AIDS/HIV education, prevention and/or risk reduction interventions to individuals, groups or communities.

(11) Program—The HIV [Education,] Prevention[, Risk Reduction Grant] Program, established under Health and Safety Code, Chapter 85, Subchapter B [created by the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, Regular Session, 1989 (Senate Bill Number 959))].

(12) Provider—A person that has been approved by the department and that has entered into a contract with the department or with a contractor of the department to deliver education, prevention, and risk reduction programs for the purposes of Health and Safety Code, Chapter 85, Subchapter B.

(13) Region—A public [Public] health region of the department, established under Health and Safety Code §121.007.

(14) Request for application (RFA)—A non-competitive solicitation providing guidance and instructions issued by the department to current providers interested in renewing their contract to deliver purchased services to carry out the purposes of Health and Safety Code, Chapter 85, Subchapter B.

(15) Request for proposal (RFP) [(RPF)]—A competitive solicitation providing guidance and instruction issued by the department to potential providers interested in submitting an application to deliver an education program to carry out the purposes of Health and Safety Code, Chapter 85, Subchapter B [the Act, Article 2].

(16) Services—Activities determined by the department in the approval and contracting process as appropriate to carry out the intent of Health and Safety Code, Chapter 85, Subchapter B.

§98.63. *Forms.*

Forms approved [which have been developed] by the department [Texas Department of Health] for use in the program [HIV Program] will be provided to applicants and providers as necessary.

§98.64. *Funds.*

(a) The board [Texas Board of Health] may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer the program [Human Immunodeficiency Virus Services Act (Act)], except as provided by other law.

(b) Funds may not be used to make cash payments or reimbursements to clients.

§98.66. *General Program Requirements.*

(a) As authorized by Health and Safety Code, Chapter 85, Subchapter B [the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill Number 959))], the board [Texas Board of Health], in these sections, establishes [has established] the program [HIV Program in the Texas Department of Health (department)] to provide for the delivery of prevention [education] programs in local communities.

(b) The department through the grant process shall endeavor to [provide for the delivery of HIV education programs to]:

- (1) (No change.)

(2) encourage community level planning and community-based service provision;

(3) (No change.)

(4) provide funding as extensively as possible across regions of the state [in amounts that reflect regional needs];

(5) (No change.)

(6) prevent unnecessary duplication of [HIV education] programs within a community;

(7) complement existing [HIV education] programs in a community;

(8) provide [HIV education] programs for populations engaging in behaviors conducive to HIV transmission;

(9) initiate needed [HIV education] programs where none exist; [and]

(10) promote partner elicitation and referral to STD and tuberculosis diagnosis and treatment; and

(11) [(10)] promote early intervention and treatment of persons with HIV infection.

§98.68. *HIV Program Review.*

(a) The department will establish a program review system to evaluate the delivery of prevention services. The review system will allow for monitoring of and technical assistance to the providers.

[(a) HIV Program (program) review activities will be accomplished through monitoring systems developed to ensure the delivery of appropriate AIDS/HIV education programs.]

(b) For economies of scale, and with the consent of the commissioner [of health], the program may contract for concurrent or retrospective program reviews.

[(c) The Texas Department of Health (department) will establish a program review system to evaluate the delivery of education programs. The program review system will allow for technical assistance to the providers.]

(c) [(d)] The department will require providers to report to the department information pertaining to performance defined by the department. [:]

[(1) the number and type of individuals reached by an education program;]

[(2) fiscal and financial management reports of expenditures;]

[(3) program accomplishments;]

[(4) copies of all materials the organization has printed or distributed related to HIV infection;]

[(5) a record of the votes of the local program materials review committee on each item; and]

[(6) a report on the networking and coordination of services with other providers.]

[(e) The department may require other program related data; however, the provider will be given 60 days advance notice prior to the end of the contract term.]

(d) [(f)] The provider must comply with the most current version of the document entitled "Content of [HIV/]AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational [Education] Sessions in Centers for

Disease Control Assistance Programs" and its preface when choosing program materials. The department adopts this document by reference. Copies may be requested from [reviewed at] the Texas Department of Health, Bureau of HIV and STD Prevention [Control, Room G-308], 1100 West 49th Street, Austin, Texas 78756-3199.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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



Division 2. AIDS/HIV Education Providers

25 TAC §§98.81-98.84, 98.86, 98.87, 98.89, 98.90

The amendments and new sections are proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for delivery of HIV education, prevention, and risk reduction programs; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The amendments and new sections affect the Health and Safety Code, Chapter 85.

§98.81. *Who May Apply for Funds from the Department [To Become a Provider].*

(a) To receive funds directly from the department to deliver prevention services [become a provider], a person must be a governmental, public[-] or private nonprofit entity located within the State [state] of Texas, including:

- (1) city or county health departments or districts;
- (2) community-based organizations; [and]
- (3) public or private hospitals ; and [-]

(4) public or private university medical center-based health delivery facilities.

(b) An individual is not eligible to receive funds directly from the department for the provision of services under this subchapter; unless the scope of work is contracted through a professional services or consulting contract [may not become a provider].

(c) Persons that receive funds directly from the department to deliver prevention services may enter into contracts with subrecipients with prior approval from the department unless restricted or otherwise prohibited.

§98.82. *Provider Application; [-] Selection; [-] Contract Process to Receive Funds Directly from the Department.*

(a) To administer the program [HIV Program (program)] effectively and to receive the maximum benefits from available funds,

the department [Texas Department of Health (department)] shall contract for services using an RFP process [education programs on a request for proposal (RFP)].

(b) The program may expedite the renewal of contracts with providers using an RFA process so that services may continue without gaps in service.

(c) [(b)] The department shall publish a public notice of the RFP in the Texas Register at least 14 [30] days prior to the date on which the application is due. Notice of the availability of funds shall be posted on the Electronic State Business Daily in compliance with Title 10, Texas Administrative Code, Chapter 199. The department may also use [will utilize] local published notices or direct contact with potential applicants.

(1) [(e)] The [After public notice has been given, the] department will forward the application packets to interested persons [packet] within three working days of a request being received in the department's Bureau of HIV and STD Prevention [HIV division].

[(d)] Complete applications at a minimum must include:

[(1)] a description of the objectives established by the applicant for the conduct of the program during the contract period;

[(2)] documentation that the applicant has consulted with appropriate local health department or public health district officials, health authority, community groups, and individuals with expertise in HIV education and a knowledge of the needs of the population to be served or as specified in the RFP or renewal documents;

[(3)] a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

[(4)] any other information required by this subchapter or requested by the department in the application package.]

(2) [(e)] The department shall conduct public hearings as required by Health and Safety Code §85.034 [in the region in which the applicant(s) is located before awarding an initial grant or grants totaling in excess of \$25,000 annually].

[(1)] At least 10 days before such a public hearing, the department shall give notice to each state representative and state senator who represents any part of the region in which any part of the contracted funds will be expended.]

[(2)] Public hearings will not be required for the renewal of a contract.]

(3) [(f)] Complete applications for funding will initially be reviewed by the department's Bureau of HIV and STD Prevention, [program and] other departmental staff[;] and by a review panel composed in such a manner that individual panel members:

(A) [(+) are knowledgeable and/or experienced [involved] with prevention [education] programs but are not employees of the department; and

(B) [(2) are not members of, employed by, or otherwise associated with[-] a particular application under review by a particular panel.

(d) At minimum, applications submitted to the department must be complete and fulfill the requirements of the RFA or RFP.

(e) [(g)] After the review [described in subsection (f) of this section], the Bureau of HIV and STD Prevention [program] will make the final selection of providers [; special consideration will be

given to nonprofit community organizations whose primary purpose is serving persons under 18 years of age].

~~(f) [(h)] Applicants approved by the program must execute contracts with the department prior to receiving any funds from the department for the approved activities. Applicants that are not selected will receive written notification to that effect from the department within 30 days after the awards have been approved [and will be given the opportunity for an informal reconsideration conducted under the provisions of §98.87 of this title (relating to Denial of an Application To Provide AIDS/HIV Services Procedure)].~~

~~[(i) A provider must agree to deliver education programs to the number and type of individuals or groups during the contract period designated and accepted by the department.]~~

~~[(j) The program may expedite the renewal of contracts with providers so that education programs may be provided without gaps in service.]~~

~~[(1) An abbreviated application format will be used to the extent deemed possible by the department.]~~

~~[(2) Applications for funding may be reviewed and approved by the department based upon the applicant's prior history of compliance with the applicable law and rules, its satisfactory performance of contract provisions, and the quality of the services being provided. The quality of education programs provided will be verified by evaluations made by the department.]~~

~~(g) [(k)] Contracts executed between the department and providers under this section are governed by the requirements in the Uniform Grant [and Contract] Management Standards (UGMS) [(UGCMS)], 1 Texas Administrative Code [TAC] §§5.141-5.167.~~

~~(h) [(l)] A provider must give assurances in the contract that the provider will abide by the requirements of [the Act,] the UGMS [UGCMS,] and these sections [this subchapter].~~

~~(i) [(m)] A copy of amendments [Amendments] to program rules [this subchapter] adopted during the term of the contract will be sent to each contractor at the time of the rule's final adoption [amendments are adopted by the Texas Board of Health. Each contractor must acknowledge in writing the receipt of the amendments and provide an assurance that they have read and understand the content of the amendments and will comply with them as part of their contractual obligation].~~

§98.83. Confidentiality.

(a) Confidentiality of all records is essential. All information obtained in connection with the examination, care, or services provided to any client under a [an HIV] program [(program),] which is carried out through a contract under these sections [this subchapter], shall not, without the client's consent, be disclosed[;] except as may be necessary to provide services to the client, or as may be required by law. [Information derived from any program may be disclosed:]

~~[(1) in statistical or other summary form; or]~~

~~[(2) in case reports, but only if the identity of the individuals diagnosed or provided care as described in the report is not disclosed and cannot be discerned.]~~

(b) To obtain and continue provider status, all applicants or providers must have a policy in place to protect client confidentiality and must assure the department [Texas Department of Health] that each individual participating in the provider's activities has been informed of the policy and the fact that civil and criminal penalties exist in the Communicable Disease Prevention and Control Act for a person who commits the offense of violating the confidentiality of

persons[; as protected under the provisions of the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4, Article 2].

(c) Failure of an applicant or a provider to have a confidentiality policy [and procedure] in place is grounds for denial of an application or termination of the provider's [approval and] contract [cancellation].

§98.84. Model Workplace Guidelines.

(a) To obtain and continue provider status, all applicants or providers must have a policy in place that is consistent with [and at least as comprehensive as] the model [guidelines for] HIV/AIDS workplace guidelines developed by the department and authorized by Health and Safety Code §85.012 [policies and education programs adopted by the Texas Board of Health (board) in §97.19 of this title (relating to Model HIV/AIDS Workplace Guidelines)]. Copies of the [board's] guidelines may be obtained from the Texas Department of Health, Bureau of HIV and STD Prevention [Public Health Promotion Division], 1100 West 49th Street, Austin, Texas 78756-3199 [78756].

(b) Failure of an applicant or a provider to have workplace policy/procedures [guidelines and procedures] in place covering this information is grounds for denial of an application or termination of the provider's [approval and cancellation of the] contract.

§98.86. Denial of Application [-Modification, Suspension, Termination of Provider Approval-Criteria].

(a) The department [Texas Department of Health (department)] may, for cause [the reasons described in subsections (b) and (c) of this section], deny the application and [modify, suspend, or terminate the] approval of a provider after written notice of the proposed action and written notice of an opportunity to dispute the denial [for an informal reconsideration or an opportunity for a due process hearing, as specified in this section.] has been given to the provider.

(b) An application may be denied by the department in accordance with criteria published in the RFP or RFA. [if the applicant:]

~~[(1) has not submitted a complete application;]~~

~~[(2) is not an entity listed in §98.81 of this title (relating to Who May Apply To Become a Provider);]~~

~~[(3) has not provided the assurances, policies, or procedures required by this subchapter relating to client confidentiality and workplace guidelines; or]~~

~~[(4) fails or refuses to execute a contract with the department.]~~

~~[(c) Provider status may be modified, suspended, or terminated if the provider:]~~

~~[(1) provides false or misleading information which is material to the approval by the department to become a provider or continue provider status;]~~

~~[(2) fails to perform in accordance with the requirements of the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4, Article 2, and the applicable provisions of the General Appropriations Act;]~~

~~[(3) fails to perform in accordance with this subchapter;]~~

~~[(4) fails to perform in accordance with the provisions of the contract; or]~~

~~{(5) fails to perform in accordance with the rules prescribed in the Uniform Contracts and Grants Management Standards, 1 TAC §§5.141-5.167.}~~

~~{(d) The department may suspend or cancel payment for services delivered if false or fraudulent requests for payments are submitted by a provider.}~~

~~{(e) A provider's contract may not be terminated during the pendency of due process hearing. Payments due to be paid to providers may be withheld during the pendency of a hearing, and payments shall resume if the final determination is in favor of the provider.}~~

§98.87. Procedure to Dispute the Department's Decision to Deny an Application.

(a) An applicant may request review of the department's action that denies the award of a contract to that applicant after response to a department solicitation.

(b) An applicant may dispute the denial by giving notice of the dispute in writing, within three working days of receiving the notice, to the Texas Department of Health, Bureau of HIV and STD Prevention, 1100 W. 49th, Austin, Texas, 78756-3199. This notice may be mailed or faxed.

(c) The Bureau of HIV and STD Prevention will process a notice of dispute in accordance with the department's administrative policy XO-0110 entitled "Protest Of Application Or Bid Denial For Client Services Contract." The program adopts this document by reference. Copies may be requested from the department by writing to the address in (b) above.

§98.89. Exceptions from Dispute Procedure.

The department is not required to offer an opportunity to dispute the decision to deny an application, or to modify, suspend or terminate provider status, if the department's actions result from the exhaustion of funds appropriated to the department for the administration of Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations.

§98.90. Public Complaints.

{(a) Filing of complaints.}

{(1)} Anyone may complain to the department [Texas Department of Health (department)] alleging that a provider has violated a statute or one of the rules of this subchapter. A person wishing to file a complaint may [complain about an alleged violation of the rules shall] notify the Bureau of HIV and STD Prevention [director of the HIV Division].

{(2)} The notification of a complaint may [must] be expressed orally to the department or in writing. Written complaints should be [and] mailed to the Chief, Bureau of HIV and STD Prevention [Director, HIV Division], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Written complaints are subject to the Open Records Act, Government Code, Chapter 552.

{(3) Upon receipt of a complaint, the director shall send an acknowledgment letter to the complainant within 15 days, if the complainant is identified to the director.}

{(b) Investigation of complaints.}

{(1) The department shall not investigate complaints which lack sufficient information. The department reserves the right to request additional, verifiable information from the complainant. If the additional information is not provided within 30 days, the department may close the complaint file without further action.}

~~{(2) The department will not investigate complaints regarding the personal activities of employees of a provider.}~~

~~{(3) Anonymous complaints shall be investigated by the department, provided sufficient, verifiable information is submitted.}~~

~~{(4) Investigations of complaints under this section shall be conducted by the commissioner or the commissioner's designee.}~~

~~{(5) The identity of the person(s) involved in filing the complaint and the person on whose behalf the complaint is filed will be privileged information of the department, to the extent allowed by law.}~~

(c) The Bureau of HIV and STD Prevention will process complaints in accordance with the Bureau of HIV and STD Prevention policy 020.050 entitled "Public Complaints and Allegations Related to the Delivery of HIV or STD Programs." The program adopts this document by reference. Copies may be requested from the department by writing to the address listed in subsection (b) of this section.

{(e) Actions after investigation. The department shall have 60 days after receipt of complaint (or of additional information requested) to investigate the complaint. If at the end of this 60-day period the department has been unable to complete its investigation, the department will so notify the complainant, if known, in writing. The department will then have an additional 60 days to complete its investigation. After investigation, the department shall take one of the following actions.}

{(1) The department may determine that an allegation is groundless and dismiss the complaint.}

{(2) The department may determine that a provider has violated a statute or one of the rules of this subchapter and shall issue a written warning to the provider to cease the activity and/or take corrective action within a specified period of time.}

{(A) If the provider complies with the written warning, the department shall close the complaint file.}

{(B) If the provider fails to comply with the written warning, the department may modify, suspend, or terminate the provider status in accordance with §98.88 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure).}

{(d) Notification of results of investigation. Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the HIV Education, Prevention, and Risk Reduction Advisory Committee, the complainant, and the accused party.}

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 15, 1998.

TRD-9814576

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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

◆ ◆ ◆
25 TAC §§98.85, 98.87-98.89

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

The repeal is proposed under the Health and Safety Code, Chapter 85, Subchapter B, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a state grant program to nonprofit community organizations for delivery of HIV education, prevention, and risk reduction programs; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The repeal affects the Health and Safety Code, Chapter 85.

§98.85. *Payment for Services.*

§98.87. *Denial of an Application to Provide AIDS/HIV Services—Procedure.*

§98.88. *Modification, Suspension, or Termination of Provider Status—Procedure.*

§98.89. *Exceptions from Appeals Procedure.*

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 15, 1998.

TRD-9814574

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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



Subchapter C. Texas HIV Medication Program

The Texas Department of Health (department) proposes the repeal of §§98.102 - 98.104, and 98.106 - 98.108, amendments to §§98.101, 98.109 - 98.112, and new §§98.102 - 98.108, 98.113 - 98.117 concerning the Texas HIV Medication Program. These proposed rules reflect a change in the title of the chapter; revisions in the organization, format, and content of text within these sections to improve understanding; reflect statutory and department policy changes; and are necessary to improve the delivery of the program to individuals infected with the human immunodeficiency virus.

The proposed amendments include a change in the title of this chapter to "HIV and STD Prevention" which is reflective of the department's mission.

Amendment to §98.101 deletes "scope" as a subsection.

The department proposes repeal of §98.102 regarding "eligibility" and offers the section as new §98.106 with revisions.

The new §98.102 provides a definition of terms used in this subchapter and is consistent with other subchapters within the same chapter.

The department proposes repeal of §98.103 regarding the "criteria for financial eligibility" and offers the section as new §98.107, defining financial eligibility criteria.

Section 98.104 is repealed and offered as the new §98.103 with minor revisions consistent with the defined terms and deletes "Program Manager" from the mailing address.

The department proposes new §98.104 relating to nondiscrimination of applicants or clients.

The department proposes the repeal of §98.106 and offers the section as new §98.105 with revisions consistent with the defined terms.

Repealed §98.102 is offered as new §98.106 with revisions which are consistent with the defined terms; clarifies that the program establishes the drug-specific eligibility criteria; and references other sections of this subchapter relating to documentation of residency and medications provided by the program.

The department proposes repeal of §98.107 (relating to the Application Process) and offers the section as new §98.108 concerning this process with revisions.

Repealed §98.103 (relating to the Criteria for Financial Eligibility) is offered as new §98.107 with changes for consistency with the defined terms; allows coverage of clients who have exhausted Medicaid benefits for a given month; replaces the term "net income" with "adjusted annual gross income" to reflect the program's process for adjusting an applicant's annual gross income; and provides an improved breakdown of how an applicant's annual gross income is adjusted to meet the financial eligibility criteria for the program.

The department proposes repeal of §98.108 regarding the appeals process and offers the section as new §98.115 with revisions.

Repealed §98.107 is offered as new §98.108 which clarifies that an application for assistance should be accompanied by financial eligibility and medical certification forms, and amends the address for mailing applications to the department.

Amendment to §98.109 is consistent with the defined terms.

The proposed amendment to §98.110 allows consistency with the defined terms, and clarifies that the program will cease providing services to a person as of the date the person is withdrawn from the program.

The proposed amendment to §98.111 is consistent with the defined terms, and clarifies that only pharmacies which are approved by the program will be used to dispense medications to eligible clients.

The proposed amendment to §98.112 is consistent with the defined terms, and allows for a copayment to be collected by pharmacies in accordance with the signed Memorandum of Agreement executed between the department and the individual pharmacy.

The department proposes new rules §98.113 which requires the applicant or current clients to be residents of the State of Texas, and describes the required documentation; and §98.114 which describes the circumstances under which an applicant or current client will be denied services, the circumstances under which an applicant or current client may be denied services, and references sections of this subchapter which relate to the appeals process.

Repealed §98.108 is offered as new §98.115 to include changes in the department's address, and the composition of the appeals

review panel which replaces the director of the Pharmacy Division with the director of the Texas HIV Medication Program.

The department proposes new §98.116 consistent with other subchapters under this chapter which excludes appeals when the department's decision to terminate or deny services results from an exhaustion of funds.

The department proposes new §98.117 (relating to Public Complaints) which is consistent with other subchapters under this chapter.

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

Mr. Powel has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections will improve the delivery of the program to eligible persons with HIV disease. There is no anticipated additional cost to small businesses nor to persons who may be required to comply with these sections. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Sharilyn K. Stanley, M.D., Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 490-2525. Comments will be accepted for 30 days after publication in the *Texas Register*.

Division 1. General Provisions

25 TAC §§98.101-98.117

The amendments and new sections are proposed under the Health and Safety Code, Chapter 85, Subchapter C, HIV Medication Program, which provides the department with the authority to establish and administer a program to assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The amendments and new sections affect the Health and Safety Code, Chapter 85.

§98.101. *Purpose [and Scope].*

~~[(a) Purpose:]~~ These sections ~~[will]~~ implement the provisions of the Texas HIV Medication Program (program) as authorized by the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066. The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in obtaining medications that have been shown to be effective in reducing hospitalizations due to HIV-related conditions and approved by the Texas Board of Health for program coverage.

~~[(b) Scope. These sections cover eligibility, criteria for financial eligibility, priority, application process, appeal procedures, confidentiality, procedures for obtaining the application materials, payment for approved medications, and participating pharmacies.]~~

§98.102. *Definitions.*

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

(1) AIDS—Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention.

(2) Board—The Texas Board of Health.

(3) Client—An individual who, under these sections, is determined by a program to be eligible for services.

(4) Commissioner—The commissioner of health.

(5) Department—The Texas Department of Health.

(6) HIV—Human immunodeficiency virus infection as defined by the Centers for Disease Control and Prevention.

(7) Legally responsible person—A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself/herself.

(8) Minor—A person who has not reached his or her 18th birthday and who has not been emancipated by a court or who is not married or recognized as an adult by the State of Texas.

(9) Program—The Texas HIV Medication Program established under the Health and Safety Code, Chapter 85, Subchapter C.

(10) Project—the HIV H.O.P.E. (Health Options to Promote Employment) Project as outlined in Rider 54 to the Texas Department of Health portion of the General Appropriations Act of the 75th Legislature.

(11) Services—activities determined by the department as appropriate to carry out the intent of, Health and Safety Code, Chapter 85, Subchapter C.

(12) Texas resident—An individual who physically resides within the geographic boundaries of the state.

§98.103. *Medication Coverage.*

(a) The medications provided under the program, and the specific eligibility criteria for them shall be determined by the commissioner, considering the recommendations of the Texas HIV Medication Advisory Committee.

(b) A list of the approved medications and specific eligibility criteria for them may be obtained from the Texas Department of Health, Bureau of HIV and STD Prevention, Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199.

§98.104. *Nondiscrimination.*

The department operates the program in a manner that allows full participation of individuals regardless of their race, color, national origin, or handicapping conditions. In addition and for purposes of the program, discrimination on the basis of gender or sexual orientation is prohibited.

§98.105. *Priority.*

The Texas HIV Medication Program will coordinate with the department's Bureau of Chronically Ill and Disabled Children Services for the provision of HIV medication for all applicants under 18 years of age.

§98.106. *Eligibility.*

A person is eligible to participate in the program if the person applying to the program:

(1) is diagnosed with HIV infection and meets the drug-specific eligibility criteria established by the program;

(2) meets the criteria of §98.113 of this title (relating to Residency; Documentation of Residency).

(3) is under the care of a licensed physician who prescribes the medication(s);

(4) requests assistance in obtaining medications covered by the program as described in §98.103 of this title (relating to Medication Coverage); and

(5) meets the financial eligibility criteria of the program.

§98.107. Criteria for Financial Eligibility.

(a) A person is financially eligible for the program if he or she:

(1) is not covered for approved program medication(s) under the Texas Medicaid Program, or has exhausted Medicaid pharmacy benefits for the given month;

(2) does not qualify for any other state or federal program which makes available medication(s) or financing for the purchase of medication(s) approved by the program;

(3) is not covered for the medication(s) by any other third-party payer; and

(4) has an adjusted annual gross income that does not exceed 200% of the most recently published federal poverty income guidelines.

(b) Adjusted annual gross income.

(1) An applicant's annual gross income (if single), or the combined annual gross income of the applicant and his or her spouse, minus the program's cost of the medication(s) that is (are) being prescribed.

(2) For a minor, the child's annual gross income if the child is an emancipated minor or meets the criteria established in Family Code, Chapter 32, §32.003, or the (combined) annual gross income of the parent(s), minus the program's cost of the medication(s) that is (are) being prescribed. The spouse or the parent must be living in the same household as the child at the time of application.

(c) The program will determine if the person satisfies this criterion from information provided by the person on the program's application form.

§98.108. Application Process.

An application for assistance is to be submitted along with completed financial eligibility and medical certification forms to the Texas Department of Health, Bureau of HIV and STD Prevention, Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199. An application packet, containing instructions and all necessary forms may be requested by writing to the Bureau of HIV and STD Prevention, Texas HIV Medication Program at the previously stated address or by telephoning toll-free 1-800-255-1090.

§98.109. Confidentiality.

No information that could identify an individual applicant will be released except as authorized by law. Applicants should realize that, in addition to the department [Texas Department of Health], their physicians and pharmacists will be aware of their diagnosis.

§98.110. Payment for Approved Medication(s).

(a) Payment will be made using specifications developed by the department [Texas Department of Health (department)] and the General Services Commission.

(b) If a person is withdrawn from the program [Texas HIV Medication Program] for any reason, the department will cease providing services to the person [payment] as of that date.

(c) The department will not pay for more than one month's issue of the medication(s) per month.

§98.111. Participating Pharmacy.

The program [Texas HIV Medication Program] will only use pharmacies approved by the program [approved pharmacies and will approve additional pharmacies if a hardship exists].

§98.112. Prescription Fees.

A [\$5.00] copayment may be collected by a participating pharmacy for each prescription in accordance with the existing Memorandum of Agreement [contract] with the department [Texas Department of Health].

§98.113. Residency; Documentation of Residency.

The program requires and the client must present documentation of Texas residency during the program's review of the client's application for services. Documents that may provide evidence of residency include:

(1) documents issued by the state or federal government, e.g., driver's license or identification card issued by the Texas Department of Public Safety; a motor vehicle registration or automobile registration form; a current Texas voter registration card; or a current Texas Medicaid card;

(2) documents relating to the applicant's income, e.g., a recent payroll check; retirement or social security check; or disability check;

(3) all documents must be in the name of the applicant unless the applicant is a dependent minor or a ward. In that event, the documents may be in the name of the legally responsible person; and

(4) the program may verify residency periodically during the receipt of services and if requested by the program, a client must provide additional documentation.

§98.114. Denial of Application or Termination of Client Benefits.

(a) Individuals applying for services or clients already receiving services will have their application denied or services terminated for any of the following reasons.

(1) Services will be denied or terminated if:

(A) the person is not a resident of the state as required in §98.106 of this title (relating to Eligibility);

(B) the adjusted annual gross income does not meet the criteria set in §98.107 of this title (relating to Criteria for Financial Eligibility);

(C) the person receiving services does not have documentation of at least an HIV infection;

(D) the client notifies the program in writing that he/she no longer wants to receive services.

(2) Services may be terminated if:

(A) the applicant or client submits an application form or any document required in support of the application which contains a misstatement of fact which is material to determining program eligibility;

(B) the client submits false claims to a participating pharmacy;

(C) the client has not requested or used services during any period of 12 consecutive months;

(D) program funds are curtailed; or

(E) funds allocated for payments on behalf of the client are exhausted.

(b) Denial, modification, suspension, or termination of services to a client will be governed by the procedures required by §98.115 of this title (relating to Appeal Procedures), and §98.116 of this title (relating to Exceptions from Appeal Procedure).

§98.115. Appeal Procedures.

(a) A person may initiate the appeal process by notifying the department's Bureau of HIV and STD Prevention that the person wishes to dispute the program's decision concerning either eligibility or funding. The written notice must contain sufficient reasons for the appeal. The notice should be addressed to the Texas Department of Health, Bureau of HIV and STD Prevention, 1100 West 49th Street, Austin, Texas, 78756-3199.

(b) A department review panel will hear the appeal. The panel shall consist of the Chief, Bureau of HIV and STD Prevention; the Chief, HIV/STD Clinical Services Section; and the Director, Texas HIV Medication Program. The appellant(s) may present the case in person before the panel. After hearing all testimony, the panel will issue a written decision. The panel's decision shall be final.

(c) Written complaints are subject to the Open Records Act, Government Code, Chapter 552.

§98.116. Exceptions from Appeal Procedures.

The department is not required to offer an opportunity to dispute the decision to deny or terminate client status, if the department's actions result from the exhaustion of funds appropriated to the department for the administration of Health and Safety Code, Chapter 85, Subchapter C, Texas HIV Medication Program.

§98.117. Public Complaints.

(a) Anyone may complain to the department alleging that a provider has violated a statute or one of the rules of this title. A person wishing to file a complaint may notify the Bureau of HIV and STD Prevention.

(b) The notification of a complaint may be expressed orally to the department or in writing. Written complaints should be mailed to the Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Written complaints are subject to the Open Records Act, Government Code, Chapter 552.

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 15, 1998.

TRD-9814585

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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

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25 TAC §§98.102-98.104, 98.106-98.108

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

The repeal is proposed under the Health and Safety Code, Chapter 85, Subchapter C, Texas HIV Medication Program, which provides the department with the authority to establish and administer a program to assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The repeal affects the Health and Safety Code, Chapter 85.

§98.102. Eligibility.

§98.103. Criteria for Financial Eligibility.

§98.104. Medication Coverage.

§98.106. Priority.

§98.107. Application Process.

§98.108. Appeal Procedures.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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

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Subchapter C. Texas HIV Medication Program

Division 3. Medication Pilot Program

25 TAC §§98.131-98.141

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

The Texas Department of Health (department) proposes the repeal of §98.131 - 98.141 relevant to the Medication Pilot Project and new §§98.131 - 98.146 concerning the HIV H.O.P.E. (Health Options to Promote Employment) Project outlined in Rider 54 of the General Appropriations Act of the 75th legislature. Sections 98.131, 98.133, 98.135 - 98.142, and 98.144 cover the project's purpose, client eligibility, criteria for financial eligibility, benefits provided under the project, priority, the client application process, confidentiality, payment for approved services, pharmacy participation, prescription fees, and appeal procedures. New §§98.132, 98.134, 98.143, 98.145, and 98.146 are proposed to include definitions, documentation of residency, denial of application or termination of client benefits, and exceptions from the appeals procedure.

The department proposes repeal of §§98.131 - 98.141 of Subchapter C. Repealed §§98.131-141 is offered as new Subchapter D, §§98.131 - 98.146 and includes revisions consistent with other subchapters within this same chapter.

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

Mr. Powel has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections will improve the delivery of the project to eligible persons with HIV disease. There is no anticipated additional cost to small businesses nor to persons who may be required to comply with these sections. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Sharilyn K. Stanley, M.D., Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 490-2525. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the Health and Safety Code, Chapter 85, Subchapter C, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a program to assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions; under Rider 54 of the General Appropriations Act of the 75th legislature which gave the department the authority to establish the project; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The repeal affects the Health and Safety Code, Chapter 85.

§98.131. *Purpose and Scope.*

§98.132. *Eligibility.*

§98.133. *Criteria for Financial Eligibility and Specific Benefits.*

§98.134. *Medication Coverage.*

§98.135. *Priority.*

§98.136. *Application Process.*

§98.137. *Appeal Procedures.*

§98.138. *Confidentiality.*

§98.139. *Payment for Approved Medication(s).*

§98.140. *Participating Pharmacy.*

§98.141. *Prescription Fees.*

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

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814578

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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

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Subchapter D. HIV H.O.P.E. (Health Options to Promote Employment) Project

25 TAC §§98.131-98.146

The new sections are proposed under the Health and Safety Code, Chapter 85, Subchapter C, State Grant Program to Community Organizations, which provides the department with the authority to establish and administer a program to assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions; under Rider 54 of the General Appropriations Act of the 75th legislature which gave the department the authority to establish the project; and under the Health and Safety Code, Chapter 12, Subchapter A, Powers and Duties of Board, which provides the Texas Board of Health with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, or the commissioner.

The new sections affect the Health and Safety Code, Chapter 85.

§98.131. Purpose.

These sections implement the provisions of the HIV H.O.P.E. (Health Options to Promote Employment) Project as outlined in Rider 54 to the Texas Department of Health portion of the General Appropriations Act of the 75th Legislature. The operation of this project is administered through the Texas HIV Medication Program administrative office and is contingent upon the receipt of private donations for the expressed purpose of purchasing HIV medications and insurance assistance. The project shall assist HIV-infected individuals not eligible for the Texas HIV Medication Program in obtaining medications that have been shown to be effective in the treatment of HIV disease and HIV-related conditions. This assistance will be in the form of direct provision of medications or insurance assistance benefits.

§98.132. Definitions.

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

(1) AIDS—Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention.

(2) Board—The Texas Board of Health.

(3) Client—An individual who, under these sections, is determined by a program to be eligible for services.

(4) Commissioner—The commissioner of health.

(5) Department—The Texas Department of Health.

(6) HIV—Human immunodeficiency virus infection as defined by the Centers for Disease Control and Prevention.

(7) Legally responsible person—A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself/herself.

(8) Minor—A person who has not reached his or her 18th birthday and who has not been emancipated by a court or who is not married or recognized as an adult by the State of Texas.

(9) Program—The Texas HIV Medication Program established under the Health and Safety Code, Chapter 85, Subchapter C.

(10) Project—The HIV H.O.P.E. (Health Options to Promote Employment) Project as outlined in Rider 54 to the Texas Department of Health portion of the General Appropriations Act of the 75th Legislature.

(11) Services—Activities determined by the department as appropriate to carry out the intent of Rider 54 to the Texas Department of Health portion of the General Appropriations Act of the 75th Legislature.

(12) Texas resident—An individual who physically resides within the geographic boundaries of the state.

§98.133. Eligibility.

A Texas resident, as defined in §98.134 of this title (relating to Residency; Documentation of Residency), is eligible to participate in the project if he or she:

(1) is diagnosed with HIV infection;

(2) is under the care of a licensed physician who prescribes the medication(s);

(3) is not eligible to receive prescription medication assistance under the Texas Medicaid Program or the Texas HIV Medication Program;

(4) does not qualify for any other local, state or federal program available for financing the purchase of approved project medication(s);

(5) meets the financial and specific eligibility criteria for the provision of medication benefits or insurance assistance benefits of the project, set out in §98.135 of this title (relating to Criteria for Financial Eligibility and Specific Benefits); and

(6) requests assistance in obtaining medications covered by the project as described in §98.136 of this title (relating to Benefits; Medication and Insurance Coverage).

§98.134. Residency; Documentation of Residency.

The program requires and the client must present documentation of Texas residency during the program's review of the client's application for services. Documents that may provide evidence of residency include:

(1) documents issued by the state or federal government, e.g., driver's license or identification card issued by the Texas Department of Public Safety; a motor vehicle registration or automobile registration form; a current Texas voter registration card; or a current Texas Medicaid card;

(2) documents relating to the applicant's income, e.g., a recent payroll check; retirement or social security check; or disability check;

(3) all documents must be in the name of the applicant unless the applicant is a dependent minor or a ward. In that event, the documents may be in the name of the legally responsible person; and

(4) the program may verify residency periodically during the receipt of services and if requested by the program, a client must provide additional documentation.

§98.135. Criteria for Financial Eligibility and Specific Benefits.

(a) A person is financially eligible for the direct provision of medication benefits of project if he or she:

(1) is not covered for the medication(s) by any other third-party payer; and

(2) has an annual gross income that falls between 201% and 500% of the most recently published federal poverty income guidelines.

(A) Annual gross income.

(i) An applicant's annual gross income (if single), or the combined annual gross income of the applicant and his or her spouse.

(ii) For a minor, the child's annual gross income if the child is an emancipated minor or meets the criteria established in the Family Code, Chapter 32, §32.003, or the (combined) annual gross income of the legally responsible person(s). The spouse or the parent must be living in the same household as the child at the time of application.

(B) The program will determine if the person satisfies this criterion from information provided by the person on the program's application form.

(b) A person is financially eligible for the insurance co-payment and deductible assistance benefits of the project if he or she:

(1) is enrolled in a current health/medical insurance plan that requires co-payment and/or deductible expenses to be paid by the insured; and

(2) has an annual gross income that does not exceed 500% of the most recently published federal poverty income guidelines.

(A) Annual gross income.

(i) An applicant's annual gross income (if single), or the combined annual gross income of the applicant and his or her spouse.

(ii) For a minor, the child's annual gross income if the child is an emancipated minor or meets the criteria established in the Family Code, Chapter 32, §32.003, or the (combined) annual gross income of the legally responsible person(s). The spouse or the parent must be living in the same household as the child at the time of application.

(B) The program will determine if the person satisfies this criterion from information provided by the person on the program's application form.

§98.136. Benefits; Medication and Insurance Coverage.

(a) The medications provided through direct purchase by the project are limited to medications approved by the commissioner for use in the Texas HIV Medication Program, and the specific medical eligibility criteria for them.

(b) The insurance benefits provided through the project are limited by the individual insurance plans.

(c) A list of the approved medications and specific medical eligibility criteria for them may be obtained from the Texas Department of Health, Bureau of HIV and STD Prevention, Texas HIV

Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199.

§98.137. Priority.

The project will design and implement guidelines that will encourage persons infected with HIV to enter and/or remain in the workforce. Benefits will be on a sliding scale, based upon the income of the project participants and the funding of the project. Current benefit guidelines may be obtained from the Texas Department of Health, Bureau of HIV and STD Prevention, Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199.

§98.138. Application Process.

An application is made by the person by submitting completed financial eligibility and medical certification forms. Application documents must be mailed to the Texas Department of Health, Bureau of HIV and STD Prevention, Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199. An application packet, containing instructions and all necessary forms, may be requested by writing to the Texas HIV Medication Program at the previously cited address in this section or by telephoning toll-free 1-800-255-1090.

§98.139. Confidentiality.

No information that could identify an individual applicant will be released except as authorized by law. Applicants should realize that, in addition to the department, their physicians, pharmacists, and insurance carrier will be aware of their diagnosis.

§98.140. Payment for Approved Services.

(a) Payment will be made using specifications developed by the department and the General Services Commission.

(b) The department will cease providing services to the person as of the date the person is withdrawn from the program for any reason.

§98.141. Participating Pharmacy.

The project will use pharmacies approved through the program.

§98.142. Prescription Fees.

A copayment may be collected by a participating pharmacy for each prescription in accordance with the existing pharmacy agreements with the department.

§98.143. Denial of Application or Termination of Client Benefits; Criteria.

(a) Individuals applying for services or clients already receiving services will have their application denied or services terminated for any of the following reasons.

(1) Services will be denied or terminated if:

(A) the person is not a resident of the state required in §98.133 of this title (relating to Eligibility);

(B) the annual gross income does not meet the criteria set in §98.135 of this title (relating to Criteria for Financial Eligibility and Specific Benefits);

(C) the person receiving services does not have documentation of at least an HIV infection; or

(D) the client notifies the provider in writing that he/she no longer wants to receive services.

(2) Services may be terminated if:

(A) the applicant or client submits an application form or any document required in support of the application which contains a misstatement of fact which is material to determining project eligibility;

(B) the client has not requested or used services during any period of 12 consecutive months;

(C) project funds are curtailed; or

(D) funds allocated for payments on behalf of the client are exhausted.

(b) Appeals of the program's decision to deny, modify, suspend, or terminate client services will be governed by the procedures required by §98.144 of this title (relating to Appeals Procedures), and §98.145 of this title (relating to Exceptions from Appeals Procedure).

§98.144. Appeal Procedures.

(a) A person may initiate the appeal process by notifying the department's Bureau of HIV and STD Prevention that the person wishes to dispute the program's decision concerning either eligibility or funding. The written notice must contain sufficient reasons for the appeal. The notice should be addressed to the Texas Department of Health, Bureau of HIV and STD Prevention, 1100 West 49th Street, Austin, Texas, 78756-3199.

(b) A department review panel will hear the appeal. The panel shall consist of the Chief, Bureau of HIV and STD Prevention; the Chief, HIV/STD Clinical Services Section; and the Director, Texas HIV Medication Program. The appellant(s) may present the case in person before the panel. After hearing all testimony, the panel will issue a written decision. The panel's decision shall be final.

(c) Written complaints are subject to the Open Records Act, Government Code, Chapter 552.

§98.145. Exceptions from Appeals Procedure.

The department is not required to offer an opportunity to dispute the decision to deny or terminate client status if the department's actions result from the exhaustion of funds donated or appropriated to the department for the administration of the project.

§98.146. Public Complaints.

(a) Anyone may complain to the department alleging that a provider has violated a statute or one of the rules of this title. A person wishing to file a complaint may notify the Bureau of HIV and STD Prevention.

(b) The notification of a complaint may be expressed orally to the department or in writing. Written complaints should be mailed to the Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Written complaints are subject to the Open Records Act, Government Code, Chapter 552.

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 15, 1998.

TRD-9814579

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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



Chapter 289. Radiation Control

The Texas Department of Health (department) proposes the repeal of existing §289.2 and new §289.301, concerning registration and radiation safety requirements for lasers. The section proposed for repeal adopts by reference the Texas Regulations for Control of Radiation Hazards. The proposed new section incorporates language from the Texas Regulations for Control of Radiation Hazards that has been rewritten in *Texas Register* format and includes the addition and revision of several subsections of the section. The repeal and new section are part of the renumbering phase in the process of rewriting the department's radiation rules in the *Texas Register* format. The new section reflects the renumbering.

The new section establishes requirements for the registration of persons who possess and use class IIIb and IV lasers in the healing arts, veterinary medicine, industry, academic and research and development institutions, and of persons who provide laser services. The revision includes new definitions that support terminology used in the new section. It also establishes requirements for protection against laser radiation hazards, responsibilities of the registrant and the laser safety officer; laser hazard control methods; training requirements; and notification of injuries. The rule revision updates the current 20-year old requirements by addressing changes in technologies and uses of lasers.

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

Mrs. McBurney also has determined that for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure continued adequate protection of the public health and safety by updating the requirements to address current technologies and uses of lasers. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public meeting to accept oral comments will be held at 1:30 p.m., Monday, October 12, 1998, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Subchapter A. Control of Radiation

25 TAC §289.2

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

The repeal is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the

control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The repeal affects Health and Safety Code, Chapter 401.

§289.2. *Control of Laser Radiation Hazards.*

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 18, 1998.

TRD-9814879

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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



Subchapter F. License Regulations

25 TAC §289.301

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

The new section affects Health and Safety Code, Chapter 401.

§289.301. *Registration and Radiation Safety Requirements for Lasers.*

(a) Purpose.

(1) This section establishes requirements for the registration of persons who receive, possess, acquire, transfer, or use class IIIb and class IV lasers in the healing arts, veterinary medicine, industry, academic, research and development institutions, and of persons who are in the business of providing laser services. No person shall use lasers or perform laser services except as authorized in a certificate of laser registration issued by the agency in accordance with the requirements of this section.

(2) This section also establishes requirements for protection against laser radiation hazards resulting from activities conducted with class IIIb or class IV lasers including responsibilities of the registrant and the laser safety officer (LSO), laser hazard control methods, training requirements and notification of injuries.

(b) Scope.

(1) Except as otherwise specifically provided, this section applies to all persons who receive, possess, acquire, transfer, or use lasers that emit or may emit laser radiation. Nothing in this section shall be interpreted as limiting the intentional exposure of patients to laser radiation for the purpose of diagnosis, therapy, or treatment by a licensed practitioner of the healing arts. Individuals shall not use lasers on humans for medical or cosmetic purposes unless under the supervision of a licensed practitioner of the healing arts. This chapter does not apply to the manufacture of lasers.

(2) Lasers, including lasers used on humans for research demonstration, shall meet the requirements of any applicable federal standard. All lasers shall meet the requirements of these and any other applicable state requirements.

(3) If any conflict arises between the requirements of this section and the laser performance standards in 21 Code of Federal Regulations (CFR) 1040, the requirements of the federal standard shall apply.

(4) This section applies to lasers that operate at wavelengths between 180 nanometers (nm) and 1 millimeter (mm).

(5) In addition to the requirements of this section, all registrants are subject to the applicable requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures); §289.201 of this title (relating to General Provisions); §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections); and §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services).

(c) Prohibitions.

(1) The agency may prohibit uses of lasers that pose significant threat or endanger public health and safety, in accordance with §289.112 of this title and §289.201 of this title.

(2) Individuals shall not be intentionally exposed to laser radiation unless such exposure has been authorized by a licensed practitioner of the healing arts. This provision specifically prohibits deliberate exposure for the following purposes:

(A) exposure of an individual for training, demonstration, or other non-healing arts purposes;

(B) exposure of an individual for the purpose of healing arts screening, except as specifically authorized by the agency; and

(C) exposure of an individual for the purpose of research. Any research using radiation producing devices on humans must be approved by an institutional review board (IRB) as required by 45 Code of Federal Regulations (CFR) 46 and 21 CFR 56. The IRB must include at least one practitioner of the healing arts to direct use of laser radiation in accordance with subsection (b)(1) of this section.

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

(1) Accessible emission limit (AEL) - The maximum accessible emission level permitted within a particular class.

(2) α_{max} - The angular limit beyond which extended source maximum permissible exposures (MPE) for a given exposure duration are expressed as a constant radiance or integrated radiance. This value is defined as 100 millirad (mrad).

(3) α_{min} - (See definition for limiting angular subtense.)

(4) Aperture - An opening through which radiation can pass.

(5) Apparent visual angle - The angular subtense of the source as calculated from source size and distance from the eye. It is not the beam divergence of the source.

(6) Attenuation - The decrease in the radiant flux of any optical beam as it passes through an absorbing or scattering medium.

(7) Beam - A collection of rays which may be parallel, divergent, or convergent.

(8) C_A - Correction factor which increases the MPE values in the near infrared (IR-A) spectral band (700-1400 nm) based upon

reduced absorption properties of melanin pigment granules found in the skin and in the retinal pigment epithelium.

(9) C_B - Correction factor that increases the MPE values in the red end of the visible spectrum (550-700 nm) because of greatly reduced photochemical hazards.

(10) C_C - Correction factor that increases the MPE values for ocular exposure because of pre-retinal absorption of radiant energy in the spectral region between 1150 and 1400 nm.

(11) C_D - Correction factor used for calculating the extended source MPE for the eye from the intrabeam MPE, when the laser source subtends a visual angle exceeding α_{min} .

(12) C_E - Correction factor that reduces the MPE for repetitively pulsed exposure of the eye.

(13) Class I laser - Any laser that does not permit access during the operation to levels of laser radiation in excess of the accessible emission limits contained in subsection (cc)(1) of this section.

(14) Class II laser - Any laser that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in subsection (cc)(1) of this section, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in subsection (cc)(2) of this section.

(15) Class IIIa laser - Any laser that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in subsection (cc)(2) of this section, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in subsection (cc)(3) of this section.

(16) Class IIIb laser - Any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of subsection (cc)(3) of this section, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in subsection (cc)(4) of this section.

(17) Class IV laser - Any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits contained in subsection (cc)(4) of this section.

(18) Coherent - A light beam is said to be coherent when the electric vector at any point in it is related to that at any other point by a definite, continuous function.

(19) Collateral radiation - Any electromagnetic radiation, except laser radiation, emitted by a laser that is physically necessary for its operation.

(20) Collimated beam - Effectively, a "parallel" beam of light with very low divergence or convergence. (See definition for intrabeam viewing.)

(21) Continuous wave (CW) - The output of a laser that is operated in a continuous rather than a pulsed mode. In this section, a laser operating with a continuous output for a period ≥ 0.25 seconds is regarded as a CW Laser.

(22) Controlled area - An area where the occupancy and activity of those within is subject to control and supervision by the registrant for the purpose of protection from radiation hazards.

(23) Cosmetic - Radiation intended to be applied to the human body or any part of the human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

(24) Diopter - A measure of the power of a lens, defined as $1/f_0$, where f_0 is the focal length of the lens in meters.

(25) Divergence - For purposes of this section, divergence is taken as the full angle, expressed in radian, of the beam spread measured between those points that include laser energy or irradiance equal to $1/e$ (where e means base natural logarithm) of the maximum value (the angular extent of a beam that contains all the radius vectors of the polar curve of radiant intensity that have length rated at 36.8% of the maximum). This is also referred to as beam spread.

(26) Electromagnetic radiation - The flow of energy consisting of orthogonally vibrating electric and magnetic fields lying transverse to the direction of propagation. X-ray, ultraviolet, visible, infrared, and radio waves occupy various portions of the electromagnetic spectrum and differ only in frequency, wavelength, or photon energy.

(27) Electronic product - Any product or article defined as follows:

(A) any manufactured or assembled product that, when in operation:

(i) contains or acts as part of an electronic circuit; and

(ii) emits, or in the absence of effective shielding or other controls would emit, electronic product radiation; or

(B) any manufactured or assembled article that is intended for use as a component, part, or accessory of a product described in subparagraph (A) of this paragraph and that when in operation emits, or in the absence of effective shielding or other controls would emit, such radiation.

(28) Energy - The capacity for doing work. Energy content is commonly used to characterize the output from pulsed lasers, and is generally expressed in joules (J).

(29) Entertainment laser - Any laser manufactured, designed, intended, or promoted for purposes of entertainment, advertising display, or artistic composition.

(30) Fail-safe interlock - An interlock where the failure of a single mechanical or electrical component of the interlock will cause the system to go into, or remain in, a safe mode.

(31) Focal point - The point toward which radiation converges or from which radiation diverges or appears to diverge.

(32) Hertz (Hz) - The unit that expresses the frequency of a periodic oscillation in cycles per second.

(33) Infrared radiation - Electromagnetic radiation with wavelengths that lie within the range 700 nanometer (nm) to 1 mm.

(34) Institutional Review Board (IRB) - Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(35) Intrabeam viewing - The viewing condition where the source subtends an angle at the eye that is equal to or less than α_{min} , the limiting angular subtense. This category includes most collimated beams and so called point sources.

(36) Irradiance (at a point of a surface) - The quotient of the radiant flux incident on an element of the surface containing the point at which irradiance is measured, by the area of that element. Unit: watt per square centimeter (W/cm^2).

(37) Joule - A unit of energy. One joule is equal to one watt*second.

(38) Laser - A device that produces an intense, coherent, directional beam of light by stimulating electronic or molecular transitions to lower energy levels. "Laser" is an acronym for light amplification by stimulated emission of radiation. The term "laser" also includes the assembly of electrical, mechanical, and optical components associated with the laser.

(39) Laser product - Any manufactured product or assemblage of components that constitutes, incorporates, or is intended to incorporate a laser and is classified as a class I, II, IIIa, IIIb or IV laser product by the United States Food and Drug Administration (FDA). A laser that is intended for use as a component of an electronic product shall itself be considered a laser product. A laser product contains an enclosed laser with an assigned class number higher than the inherent capability of the laser in which it is incorporated and where the product's lower classification is appropriate due to the engineering features limiting accessible emission.

(40) Laser safety officer - An individual who has a knowledge of and the authority and responsibility to apply appropriate laser radiation protection rules, standards, and practices, and who must be specifically authorized on a certificate of laser registration.

(41) Limiting angular subtense (α_{min}) - The apparent visual angle that divides intrabeam viewing from extended-source viewing.

(42) Limiting aperture (D_c) - The maximum diameter of a circle over which irradiance and radiant exposure can be averaged.

(43) Limiting exposure duration (T_{max}) - An exposure duration that is specifically limited by the design or intended use(s).

(44) Maximum permissible exposure (MPE) - The level of laser radiation to which a person may be exposed without hazardous effect or adverse biological changes in the eye or skin.

(45) Medical event - An exposure to a patient outside the nominal hazard zone (NHZ) that exceeds the MPE, or any adverse patient health effect that is a result of failure or misuse of safety equipment.

(46) Nominal hazard zone (NHZ) - The space within which the level of direct, reflected, or scattered radiation during operation exceeds the applicable MPE. Exposure levels beyond the boundary of the NHZ are below the applicable MPE level.

(47) Optical density (D_λ) - The logarithm to the base ten of the reciprocal of the transmittance. $D_\lambda = -\log_{10} T_\lambda$, where T_λ is transmittance.

(48) Point source - A source of radiation whose dimensions are small enough to result in a subtended angle that is less than α_{min} . For the purpose of this section, a point source leads to intrabeam viewing condition.

(49) Practitioner of the healing arts (practitioner) - A person licensed to practice the healing arts by either the Texas State Board of Medical Examiners as a physician; the Texas State Board of Dental Examiners; the Texas Board of Chiropractic Examiners; or the Texas State Board of Podiatry Examiners.

(50) PRF - The abbreviation for pulse-repetition frequency.

(51) Protective housing - An enclosure surrounding the laser that prevents access to laser radiation above the applicable MPE level. The aperture through which the useful beam is emitted is not part of the protective housing. The protective housing may enclose associated optics and a work station and shall limit access to other associated radiant energy emissions and to electrical hazards associated with components and terminals.

(52) Provider of services - A person who furnishes a laser(s) on a routine basis for a limited time period to a facility that operates the laser(s) during that limited time period.

(53) Pulse duration - The duration of a laser pulse. This is usually measured as the time interval between the half-power points on the leading and trailing edges of the laser pulse.

(54) Pulsed laser - A laser that delivers its energy in the form of a single pulse or a train of pulses. In this section, the duration of a pulse is <0.25 seconds in a pulsed laser.

(55) Reflection - The deviation of radiation following incidence on a surface.

(56) Service - The performance of those procedures or adjustments described in the manufacturer's service instructions that may affect any aspect of the performance of the laser.

(57) Source - A laser or a laser-illuminated reflecting surface.

(58) T_r - The exposure duration (time) at which MPEs based upon thermal injury are replaced by MPEs based upon photochemical injury to the retina.

(59) T_{max} - (See definition for limiting exposure duration.)

(60) Transmission - Passage of radiation through a medium.

(61) Ultraviolet radiation - Electromagnetic radiation with wavelengths smaller than those of visible radiation; for the purpose of this section 180 to 400 nm.

(62) Visible radiation (light) - Electromagnetic radiation that can be detected by the human eye. This term is commonly used to describe wavelengths that lie in the range of 400 to 700 nm.

(63) Watt - The unit of power or radiant flux. 1 watt equals 1 joule per second.

(64) Wavelength (λ) - The distance between two successive points on a periodic wave that have the same phase.

(e) Exemptions.

(1) Lasers in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of lasers.

(2) Inoperable lasers are exempt from the requirements of this section.

(3) Class I, class II, and class IIIa lasers or products are exempt from the requirements of this section.

(f) Registration of laser uses and services.

(1) For purposes of this section, laser uses and services shall include, but may not be limited to:

(A) possession and use of lasers in the healing arts, veterinary medicine, industry, academic, and research and development institutions;

(B) demonstration and sales of lasers that require the individual to operate or cause a laser to be operated in order to demonstrate or sell;

(C) provision of lasers on a periodic basis to a facility for limited time periods by a provider of lasers. For healing arts facilities, the use of lasers shall be directed by a licensed practitioner of the healing arts;

(D) alignment, calibration, and/or repair; or

(E) laser light shows.

(2) A person who has made application for registration in accordance with this section and is using a laser prior to receiving a certificate of laser registration is subject to the requirements of this chapter.

(g) Application requirements.

(1) General application requirements.

(A) Application for certificate of laser registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(B) A laser safety officer (LSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The LSO shall meet the applicable requirements of subsection (p) of this section and carry out the responsibilities of subsection (q) of this section.

(C) If the applicant is a corporation under the Texas Business Corporation Act, BRC Form 226-1 shall be submitted with the application to confirm that no tax owed the state under Tax Code, Chapter 171, is delinquent.

(D) Each application for a certificate of laser registration shall be accompanied by the appropriate fee prescribed in §289.204 of this title.

(E) An application for a certificate of laser registration may include a request for a certificate of laser registration authorizing one or more activities.

(F) The agency may, at any time after filing of the original application and before issuance of the certificate of registration, require further statements in order to enable the agency to determine whether the application should be granted or denied.

(G) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with §289.201(n) of this title.

(2) Application for use of laser on humans or animals.

(A) In addition to the requirements of subsection (g)(1) of this section, each person having a laser for use in the healing arts, or for use on animals shall submit an application to the agency within 30 days following the commencement of operation of that laser.

(B) An application for healing arts or veterinary medicine shall be signed by a licensed practitioner of the healing arts or veterinarian. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed practitioner's signature if the facility is a licensed hospital or a medical facility. A signature by the administrator, president, or chief executive officer does not relieve the practitioner user or veterinarian user from complying with the requirements of this section.

(3) Application for use of lasers in industrial, academic, and research and development institutions. In addition to the requirements of subsection (g)(1) of this section, each applicant having a laser(s) for use in industrial, academic, and research and development institutions shall submit an application to the agency within 30 days following the commencement of operation.

(4) Application for demonstration for the purpose of sales of lasers.

(A) Each applicant shall apply for and receive a certificate of laser registration before the demonstration for purpose of selling laser(s), including demonstration for the selling of surplus lasers.

(B) In addition to the requirements of subsection (g)(1) of this section, the applicant shall submit a statement confirming that no demonstration will be performed on humans unless directed by a licensed practitioner of the healing arts.

(5) Application for providers of lasers.

(A) Each applicant shall apply for and receive a certificate of laser registration before providing lasers.

(B) In addition to the requirements of subsection (g)(1) of this section, the applicant shall submit the following:

(i) the address of the established main location where the laser and records will be maintained for inspection. This shall be a physical street address, not a post office box number; and

(ii) a list of facilities where the laser will be provided.

(6) Application for alignment, calibration, and/or repair. In addition to the requirements of subsection (g)(1) of this section, each applicant shall apply for and receive a certificate of laser radiation for alignment, calibration, and/or repair before providing alignment, calibration, and/or repair of lasers.

(7) Application for laser light show.

(A) Each applicant shall apply for and receive a certificate of laser registration for laser light show before beginning any show.

(B) In accordance with subparagraph (A) of this paragraph and in addition to the requirements of subsection (g)(1) of this section, each applicant shall submit the following:

(i) a valid variance issued from the FDA for the laser intended to be used. The registrant shall comply with the conditions of the FDA variance.

(ii) a written notice of the laser light show to be performed in Texas. The information contained in BRC Form 301-1 shall be provided seven days prior to each show. If, in a specific case the seven working-day period would impose an undue hardship on the applicant, the applicant may, upon written request to the agency, obtain permission to proceed sooner.

(8) Application for mobile services used in the healing arts and veterinary arts.

(A) Each applicant shall apply for and receive a certificate of laser registration for mobile services before beginning to provide mobile services.

(B) In addition to the requirements of subsection (g)(1) of this section, each applicant shall submit the address of the established main location where the laser, records, etc. will be

maintained for inspection. This shall be a physical street address, not a post office box number.

(C) An application for mobile services for healing arts or veterinary medicine shall be signed by a licensed practitioner of the healing arts or veterinarian.

(D) The facility receiving the services provided by a mobile service company shall verify that the mobile services company is properly registered with the agency.

(h) Issuance of certificate of laser registration.

(1) Upon determination that an application meets the requirements of the Texas Radiation Control Act (Act) and the rules of the agency, the agency may issue a certificate of laser registration authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) The agency may incorporate in the certificate of laser registration at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's receipt, possession, use, and transfer of lasers subject to this section as it deems appropriate or necessary in order to:

(A) minimize danger to public health and safety;

(B) require such reports and the keeping of such records for inspection by the agency; and

(C) prevent loss or theft of lasers subject to this section.

(i) Specific terms and conditions of certificates of laser registration.

(1) Each certificate of laser registration issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable rules in this chapter and orders issued by the agency.

(2) Each person registered by the agency for laser use in accordance with this section shall confine use and possession of the laser registered to the locations and purposes authorized in the certificate.

(3) No certificate of laser registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(j) Responsibilities of registrant.

(1) The registrant shall notify the agency in writing within 30 days of a change in any of the following:

(A) name and mailing address;

(B) laser safety officer (LSO); or

(C) name of facility contracted for "provider of services", if applicable.

(2) No person shall make, sell, lease, transfer, or lend lasers unless such machines and equipment, when properly placed in operation and used, meet the applicable requirements of this section.

(3) When requested by the agency, the registrant shall submit an annual inventory of lasers possessed and used, including disposition.

(4) The registrant is responsible for complying with this section and the conditions of the certificate of laser registration.

(k) Expiration of certificates of laser registration.

(1) Except as provided by subsection (m) of this section, each certificate of laser registration that specifies an expiration date expires at the end of the day on that date. Expiration of the certificate of laser registration does not relieve the registrant of the requirements of this chapter.

(2) If a registrant does not submit an application for renewal of the certificate of laser registration under subsection (m) of this section, as applicable, the registrant shall on or before the expiration date specified in the certificate of laser registration:

- (A) terminate use and/or services of laser(s);
- (B) submit a record of the disposition of the laser(s);

and

(C) pay any outstanding fees in accordance with §289.204 of this title.

(l) Termination of certificates of laser registration.

(1) Each registrant shall notify the agency immediately, in writing, and request termination of the certificate of laser registration when the registrant decides to terminate all activities involving lasers authorized under the certificate of laser registration.

(2) Concurrent with the notification and request for termination of the certificate of laser registration, the registrant shall do the following:

- (A) submit a record of disposal of lasers; and
- (B) pay any outstanding fees in accordance with §289.204 of this title.

(m) Renewal of certificate of registration.

(1) Application for renewal of laser registration shall be filed in accordance with subsection (g) of this section.

(2) If a registrant files an application in proper form before the existing certificate of laser registration expires, such existing certificate of laser registration shall not expire until the application status has been determined by the agency.

(n) Modification and revocation of certificates of laser registration.

(1) The terms and conditions of all certificates of laser registration shall be subject to amendment, revision, or modification. A certificate of laser registration may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.

(2) Any certificate of laser registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under the provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of laser registration on an application; or

(C) violation of, or failure to observe applicable terms and conditions of the Act, this chapter, the certificate of laser registration, or order of the agency.

(3) Except in cases in which the public health, interest or safety requires otherwise, no certificate of laser registration shall be modified, suspended, or revoked unless, prior to the institution of

proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(o) Notifications.

(1) Each registrant shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by or against:

(A) a registrant;

(B) an entity controlling a registrant or listing the certificate of laser registration of the registrant as property of the estate; or

(C) an affiliate of the registrant.

(2) This notification shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed;

(B) the name of the entity in bankruptcy; and

(C) the date of the filing of the petition.

(3) A copy of the "petition for bankruptcy" shall be submitted to the agency along with the written notification.

(p) LSO qualifications. LSO qualifications shall be submitted to the agency and shall include the following:

(1) educational courses related to non-ionizing radiation safety or a laser safety officer course;

(2) experience in the use and familiarity of the type of equipment or services registered for; and

(3) knowledge of potential laser radiation hazards or emergency precautions.

(q) LSO duties. Specific duties of the LSO shall include, but not be limited to the following:

(1) ensuring that users of lasers are trained in laser safety, as applicable for the class and type of lasers in use with the users duties;

(2) assuming control and having the authority to institute corrective actions including shutdown of operations when necessary in emergency situations or unsafe conditions; and

(3) specifying whether any changes in control measures are required following:

(A) any service and maintenance of lasers that may affect the output power or operating characteristics; or

(B) whenever deliberate modifications are made that could change the laser class and affect the output power or operating characteristics.

(4) ensuring maintenance and other practices required for safe operation of the laser(s) are performed;

(5) ensuring the proper use of protective eyewear and other safety measures; and

(6) ensuring compliance with the requirements in this section and with any engineering or operational controls specified by the registrant.

(r) Requirements for protection against laser radiation. These requirements are for lasers in their intended mode of operation and

include special requirements for service, testing, maintenance, and modification. During some laser operations, certain engineering controls may be inappropriate. In situations where an engineering control may be inappropriate, for example, during medical procedures or surgery, the LSO shall specify alternate requirements to obtain equivalent laser safety protection.

(1) MPE. Each registrant or user of any laser shall not permit any individual to be exposed to levels of laser or collateral radiation higher than are specified in subsection (cc)(5)-(8) of this section.

(2) Engineering controls.

(A) Protective housing.

(i) Each laser shall have a protective housing that prevents human access during the operation of the laser and collateral radiation that exceeds the limits of class I and subsection (cc)(8)(A) and (B) of this section, wherever and whenever such human access is not necessary in order for the laser to perform its intended function.

(ii) Wherever and whenever human access to laser radiation levels that exceed the limits of class I and subsection (cc)(8)(A) and (B) of this section is necessary, these levels shall not exceed the limits of the lowest laser class necessary to perform the intended function(s).

(B) Safety interlocks.

(i) A safety interlock, that shall ensure that radiation is not accessible above MPE limits, shall be provided for any portion of the protective housing that by design can be removed or displaced without the use of tools during normal operation or maintenance, and thereby allows access to radiation above MPE limits.

(ii) Adjustment during operation, service, testing, or maintenance of a laser containing interlocks shall not cause the interlocks to become inoperative or the radiation to exceed MPE limits outside protective housing except where a laser controlled area as specified in subparagraph (E) of this paragraph is established.

(iii) For pulsed lasers, interlocks shall be designed so as to prevent firing of the laser; for example, by dumping the stored energy into a dummy load.

(iv) For class IIIb and class IV CW lasers, the interlocks shall turn off the power supply or interrupt the beam; for example, by means of shutters.

(v) An interlock shall not allow automatic accessibility of radiation emission above MPE limits when the interlock is closed.

(vi) Either multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing upon such failure shall be provided, if failure of a single interlock would allow the following:

(I) human access to levels of laser radiation in excess of the radiant power accessible emission limit of class IIIa laser radiation; or

(II) laser radiation in excess of the accessible emission limits of class II to be emitted directly through the opening created by removal or displacement of that portion of the protective housing.

(C) Viewing optics and windows.

(i) All viewing ports, viewing optics, or display screens included as an integral part of an enclosed laser or laser

shall incorporate suitable means to attenuate the laser and collateral radiation transmitted through the port to less than the MPE and the limits listed in subsection (cc)(8) of this section under any conditions of operation of the laser.

(ii) Since optical systems such as lenses, telescopes, and microscopes may increase the hazard to the eye or the skin, the potential hazard and specific administrative procedures and the use of controls such as interlocks or filters shall be determined.

(D) Warning systems. Each class IIIb or IV laser or laser product shall provide visual or audible indication during the emission of accessible laser radiation. In the case of class IIIb lasers, except those that allow access only to less than 5 milliwatt (mW) peak visible laser radiation, and class IV lasers, this indication shall be sufficient prior to emission of such radiation to allow appropriate action to avoid exposure. Any visual indicator shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation. If the laser and laser energy source are housed separately and can be operated at a separation distance of greater than two meters, both laser and laser energy source shall incorporate visual or audible indicators. The visual indicators shall be positioned so that viewing does not require human access to laser radiation in excess of the MPE.

(E) Controlled area. With a class IIIb laser, except those that allow access only to less than 5 mW visible peak power, or class IV laser, a controlled area shall be established when exposure to the laser radiation in excess of the MPE or the limits listed in subsection (cc)(8) of this section is possible. The controlled area shall meet the following requirements, as applicable.

(i) The area shall be posted as required by subsection (v) of this section.

(ii) Access to the controlled area shall be restricted.

(iii) For class IV indoor controlled areas, latches, interlocks, or other appropriate means shall be used to prevent unauthorized entry into controlled areas.

(I) Such measures shall be designed to allow both rapid egress by the laser personnel at all times and/or admittance to the controlled area in an emergency condition. For such emergency conditions, a control-disconnect switch or equivalent device (panic button) shall be available for deactivating the laser.

(II) Where safety latches or interlocks are not feasible or are inappropriate, for example during medical procedures, such as surgery, the following shall apply.

(-a-) All authorized personnel shall be trained in laser safety and appropriate personal protective equipment shall be provided upon entry.

(-b-) A door, blocking barrier, screen, and curtains shall be used to block, screen, or attenuate the laser radiation at the entryway. The level at the exterior of these devices shall not exceed the applicable MPE, nor shall personnel experience any exposure above the MPE immediately upon entry.

(-c-) At the entryway there shall be a visible or audible signal indicating that the laser is energized and operating at class IV levels. A lighted laser warning sign, flashing light (visible through laser protective eyewear) or other appropriate signage are some of the methods to accomplish this requirement. Alternatively, an entryway warning light assembly may be interfaced to the laser in such a manner that one light will indicate when the laser is not operational (high voltage off) and by an additional light when the laser is powered up (high voltage applied, but no laser emission) and

by an additional (flashing optional) light that activates when the laser is operating.

(iv) For class IV indoor controlled areas, during tests requiring continuous operation, the individual in charge of the controlled area shall be permitted to momentarily override the safety interlocks to allow access to other authorized personnel if it is clearly evident that there is no optical radiation hazard at the point of entry and if the necessary protective devices are being worn by the entering personnel.

(v) For class IV indoor controlled areas, optical paths (for example, windows) from an indoor facility shall be controlled in such a manner as to reduce the transmitted values of the laser radiation to levels at or below the appropriate MPE and the limits listed in subsection (cc)(8) of this section. (When the laser beam must exit the indoor controlled area (as in the case of exterior atmospheric beam paths), the operator shall be responsible for ensuring that the beam path is limited to controlled air space (contact Federal Aviation Administration (FAA) or other appropriate agencies, as necessary) or controlled ground space when the beam irradiance or radiant exposure is above the appropriate MPE and the limits listed in subsection (cc)(8) of this section).

(vi) When the removal of panels or protective covers and/or overriding of interlocks becomes necessary, such as for servicing, testing, or maintenance, and accessible laser radiation exceeds the MPE and the limits listed in subsection (cc)(8) of this section, a temporary controlled area shall be established and posted.

(s) Additional requirements for special lasers and applications.

(1) Infrared laser. The beam from a laser shall be terminated in fire-resistant material where necessary. Inspection intervals of absorbent material and actions to be taken in the event or evidence of degradation shall be specified in the operating and safety procedures. (Manufactured metal surfaces that appear "dull" visually can act as specular reflectors of infrared radiation.)

(2) Laser optical fiber transmission system.

(A) Laser transmission systems that employ optical cables shall be considered enclosed systems with the optical cable forming part of the protective housing.

(B) Disconnection of a connector resulting in access to radiation in excess of the applicable MPE or the limits listed in subsection (cc)(8) of this section shall take place in a controlled area. Except for medical lasers whose manufacture has been approved by the FDA, the use of a tool shall be required for the disconnection of a connector for service and maintenance purposes when the connector is not within a secured enclosure. All connectors shall bear the appropriate label or tag specified in subsection (v)(3) of this section.

(t) Additional requirements for safe operation.

(1) Eye Protection. Protective eyewear shall be worn by all individuals with access to class IIIb and/or class IV levels of laser radiation. Protective eyewear devices shall meet the following requirements:

(A) provide a comfortable and appropriate fit all around the area of the eye;

(B) be in proper condition to ensure the optical filter(s) and holder provide the required optical density or greater at the desired wavelengths, and retain all protective properties during its use;

(C) be suitable for the specific wavelength of the laser and be of optical density adequate for the energy involved. The required optical density shall be determined based on the type of potential exposure requiring protection. The maximum power or energy density for CW lasers for which adequate protection is afforded by glasses of optical densities of five through eight is as follows:

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(D) have the optical density or densities and associated wavelength(s) permanently labeled on the filters or eyewear; and

(E) be examined, at intervals not to exceed 12 months, to ensure the reliability of the protective filters and integrity of the protective filter frames. Eyewear in suspicious condition shall be discarded or tested for acceptability.

(2) Skin protection. When there is a possibility of exposure to laser radiation that exceeds the MPE limits for skin as specified in subsection (cc)(7) of this section, the registrant shall require the appropriate use of protective gloves, clothing, or shields.

(u) NHZ. Where applicable, in the presence of unenclosed class IIIb and class IV beam paths, an NHZ shall be established. If the beam of an unenclosed class IIIb or class IV laser is contained within a region by adequate control measures to protect personnel from exposure to levels of radiation above the appropriate MPE, that region may be considered to contain the NHZ. The NHZ may be determined by information supplied by the laser manufacturer, by measurement, or by using the appropriate laser range equation or other equivalent assessment.

(v) Caution signs, labels, and posting.

(1) General requirements. Except as otherwise authorized by the agency, signs, symbols, and labels prescribed by this section shall use the design and colors specified in subsection (dd)(1) and (2) of this section.

(2) Posting and instructions.

(A) The laser controlled area shall be conspicuously posted with an appropriate sign or signs as specified in paragraph (3) of this subsection and subsection (dd)(1) and (2) of this section.

(B) Operating personnel of each laser shall be provided with written instructions for safe use, including clear warnings and precautions to avoid possible exposure to laser and collateral radiation in excess of the MPE and the limits listed in subsection (cc)(8) of this section.

(3) Labeling lasers and posting laser facilities.

(A) Class IIIb lasers shall have a label and facilities shall be posted with a sign(s) with the warning specified in subsection (dd)(2) of this section that includes the following wording: "LASER RADIATION - AVOID DIRECT EXPOSURE TO BEAM. CLASS IIIb LASER (OR LASER PRODUCT)".

(B) Class IV lasers and facilities shall have a label affixed and be posted with a sign(s) with the warning specified in subsection (dd)(2) of this section that includes the following wording: "LASER RADIATION - AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION. CLASS IV LASER (OR LASER PRODUCT)".

(C) Lasers, except lasers used in the practice of medicine, shall have a label(s) in close proximity to each aperture through which is emitted accessible laser or collateral radiation in

excess of the limits specified in subsection (cc)(5) and (8) of this section with the following wording as applicable.

(i) "AVOID EXPOSURE - Laser radiation is emitted from this aperture," if the radiation emitted through such aperture is laser radiation.

(ii) "AVOID EXPOSURE - Hazardous electromagnetic radiation is emitted from this aperture," if the radiation emitted through such aperture is collateral radiation.

(iii) "AVOID EXPOSURE - Hazardous x-rays are emitted from this aperture," if the radiation emitted through such aperture is collateral x-ray radiation.

(D) Each laser shall state, on the required warning logotype, the maximum output of laser radiation, the pulse duration when appropriate, and the laser medium or emitted wavelength(s).

(E) Each noninterlocked or defeatably interlocked portion of the protective housing or enclosure that is designed to be displaced or removed during normal operation or servicing, and that would permit human access to laser or collateral radiation, shall have labels as follows.

(i) For laser radiation in excess of the accessible emission limits of class IIIB, the wording: "DANGER - LASER RADIATION WHEN OPEN. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION".

(ii) For collateral radiation in excess of the emission limits of subsection (cc)(8) of this section:

(I) if the limits in subsection (cc)(8)(A) of this section are exceeded, the wording: "CAUTION - HAZARDOUS ELECTROMAGNETIC RADIATION WHEN OPEN"; and

(II) if the limits in subsection (cc)(8)(B) of this section are exceeded, the wording: "CAUTION - HAZARDOUS X-RAY RADIATION."

(iii) For protective housing or enclosures that provide a defeatable interlock, the words "and interlock defeated" shall be included in the labels specified in clauses (i) and (ii) of this subparagraph.

(F) Other required labels.

(i) The word "invisible" shall immediately precede the word "radiation" on labels and signs required by this subparagraph for wavelengths of laser and collateral radiation that are outside of the range of 400 to 700 nm.

(ii) The words "visible and invisible" shall immediately precede the word "radiation" on labels and signs required by this subparagraph for wavelengths of laser and collateral radiation that are both within and outside the range of 400 to 700 nm.

(G) All labels placed on lasers or signs posted to laser facilities shall be positioned so as to make unnecessary, during reading, human exposure to laser radiation in excess of the MPE and the limits listed in subsection (cc)(8) of this section.

(H) Labels and signs required by this subparagraph shall be clearly visible, legible, and permanently attached to the laser or facility.

(w) Surveys. Each registrant shall make or cause to be made such surveys as may be necessary to comply with this section. Surveys shall be performed at intervals not to exceed 12 months, to include but not be limited to the following:

(1) a determination that all laser protective devices are labeled correctly and functioning within the design specifications and are properly chosen for lasers in use;

(2) a determination that all warning devices are functioning within their design specifications;

(3) a determination that the laser controlled area is properly controlled and posted with accurate warning signs in accordance with subsection (v) of this section;

(4) a re-evaluation of potential hazards from surfaces that may be associated with laser beam paths; and

(5) additional surveys required to evaluate the laser and collateral radiation hazard incident to the use of lasers.

(x) Records. Each registrant shall maintain current records in accordance with subsection (ee) of this section.

(y) Measurements and instrumentation. Each determination requiring a measurement for compliance with this section shall use instrumentation that is calibrated and designed for use with the laser that is to be tested.

(z) Notification of injury other than a medical event.

(1) Each registrant shall immediately notify the agency by telephone of any injury involving a laser possessed by the registrant, other than intentional exposure of patients for medical purposes, that has or may have caused:

(A) an injury to an individual that involves the partial or total loss of sight in either eye; or

(B) an injury to an individual that involves perforation of the skin or other serious injury exclusive of eye injury.

(2) Each registrant shall, within 24 hours of discovery of an injury, report to the agency each injury involving any laser possessed by the registrant, other than intentional exposure of patients for medical purposes, that may have caused, or threatens to cause, an exposure to an individual with second or third-degree burns to the skin or potential injury and partial loss of sight.

(aa) Reports of injuries.

(1) Each registrant shall make a report in writing, or by electronic transmittal, within 30 days to the agency of any injury required to be reported in accordance with subsection (z) of this section.

(2) Each report shall describe the following:

(A) the extent of injury to individuals to laser radiation;

(B) power output of laser involved;

(C) the cause of the injury; and

(D) corrective steps taken or planned to be taken to prevent a recurrence.

(3) Any report filed with the agency in accordance with this subsection shall include the full name of each individual injured and a description of the injury. The report shall be prepared so that this information is stated in a separate part of the report.

(4) When a registrant is required in accordance with paragraphs (1)- (3) of this subsection to report to the agency any injury of an individual to laser radiation, the registrant shall also notify the individual. Such notice shall be transmitted to the individual at a time not later than the transmittal to the agency.

(bb) Medical event.

(1) The registrant shall notify the agency, by telephone or electronic transmittal, within 24 hours of any injury to or death of a patient. Within 30 days after a 24 hour notification is made, the registrant shall submit a written report to the agency of the event.

(2) The written report shall include the following:

(A) the registrant's name;

(B) the referring physician's name;

(C) a brief description of the event;

(D) the effect on the patient;

(E) the action taken to prevent recurrence; and

(F) whether the registrant informed the patient or the patient's responsible relative or guardian.

(3) When a medical event occurs, the registrant shall promptly investigate its cause, make a record for agency review, and retain the records as stated in subsection (ee) of this section.

(cc) Appendices.

(1) Class I accessible emission limits for laser radiation. The following table contains class I accessible emission limits for laser radiation.

Figure: 25 TAC §289.301(cc)(1)

(2) Class II accessible emission limits for laser radiation. The following table contains class II accessible emission limits that are identical to class I accessible emission limits except:

Figure: 25 TAC §289.301(cc)(2)

(3) Class IIIa accessible emission limits for laser radiation. The following table contains class IIIa accessible emission limits that are identical to class I accessible emission limits except:

Figure: 25 TAC §289.301(cc)(3)

(4) Class IIIb accessible emission limits for laser radiation. The following table contains class IIIb accessible emission limits for laser radiation.

Figure: 25 TAC §289.301(cc)(4)

(5) MPE for direct ocular exposure (intrabeam viewing) to a laser beam. The following table contains the MPEs for direct ocular exposure.

Figure: 25 TAC §289.301(cc)(5)

(6) MPE for viewing a diffuse reflection of a laser beam or an extended-source laser. The following table contains the MPEs for viewing a diffuse reflection of a laser beam or an extended source laser.

Figure: 25 TAC §289.301(cc)(6)

(7) MPE for skin exposure to a laser beam. The following table contains the MPEs for skin exposure to a laser beam.

Figure: 25 TAC §289.301(cc)(7)

(8) Accessible emission limits for collateral radiation from lasers or facilities and MPE. The following table contains accessible emission limits for collateral radiation from lasers or facilities and MPE.

(A) Accessible emission limits for collateral radiation having wavelengths greater than or equal to 180 nm but less than or equal to 1 mm are identical to the accessible emission limits of class I laser radiation as determined from subsection (cc)(1) of this section for the appropriate wavelength(s) and emission duration.

(i) In the wavelength range of ≤ 400 nm, for all emission durations.

(ii) In the wavelength range > 400 nm, for all emission durations less than or equal to 1×10^3 seconds and, when applicable for all emission durations.

(B) Accessible emission limit and MPE for collateral radiation within the x-ray range of wavelengths is 0.5 milliroentgen in an hour, averaged over an area of 10 square centimeters with no dimension greater than 5 centimeters.

(C) The MPE for optical collateral radiation shall be determined as specified in paragraph (5) of this subsection.

(9) Values of wavelength dependent correction factors.

Figure: 25 TAC §289.301(cc)(9)

(10) Selected numerical solutions.

Figure: 25 TAC §289.301(cc)(10)

(11) Maximum aperture diameters (limiting aperture) for measurement averaging. The following table contains maximum aperture diameters (limiting aperture) for measurement averaging.

Figure: 25 TAC §289.301(cc)(11)

(A) This material is from American National Standard for the Safe Use of Lasers, ANSI Z136.1.

(B) For the specific case of optical viewing (beam collecting) instruments, the apertures listed for eye MPE and skin MPE apply to the exit beam of such devices.

(dd) Signs and graphs.

(1) Caution sign. The following signs and graphs contain an appropriate sign in accordance with subsection (v)(2)(A) of this section.

Figure: 25 TAC §289.301(dd)(1)

(2) Danger sign. The following signs and graphs contain an appropriate sign in accordance with subsection (v)(2)(A) of this section.

Figure: 25 TAC §289.301(dd)(2)

(3) Graph A. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5) of this section.

Figure: 25 TAC §289.301(dd)(3)

(4) Graph B. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5)-(7) of this section.

Figure: 25 TAC §289.301(dd)(4)

(5) Graph C. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5)-(7) of this section.

Figure: 25 TAC §289.301(dd)(5)

(6) Graph D. The following signs and graphs contain graphic representation in accordance with subsection (cc)(6) of this section.

Figure: 25 TAC §289.301(dd)(6)

(7) Graph E. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5)-(7) of this section.

Figure: 25 TAC §289.301(dd)(7)

(8) Graph F. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5) and (6).

Figure: 25 TAC §289.301(dd)(8)

(9) Graph G. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5) and (6) of this section.

Figure: 25 TAC §289.301(dd)(9)

(10) Graph H. The following signs and graphs contain graphic representation in accordance with subsection (cc)(5) and (6) of this section.

Figure: 25 TAC §289.301(dd)(10)

(ee) Record keeping. The following are time requirements for record keeping:

Figure: 25 TAC §289.301(ee)

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 18, 1998.

TRD-9814880

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1998

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



Part XVI. Texas Health Care Information Council

Chapter 1301. Health Care Information

Subchapter H. Relating to Historically Underutilized Business Program

25 TAC §1301.71

The Texas Health Care Information Council (Council) proposes new §1301.71, concerning Historically Underutilized Business. The new section is being proposed to comply with House Bill 1, General Appropriations Act, 75th Legislature, Article IX, §124.5 (1997), which directs state agencies to adopt the rules of the General Services Commission based on that Commission's State Disparity Study. The proposed rule adopts the Commission's rules by reference.

Jim Loyd, Executive Director, has determined that for the first five-year period the rule is in effect there will no additional cost to local governments. Mr. Loyd estimates additional costs to the state of no more than \$200 as a result of enforcing or administering the new section.

Mr. Loyd also has determined that for each year of the first five-year period the rule is in effect the public benefit will be an adopted new rule to comply with House Bill 1, General Appropriations Act, 75th Legislature, Article IX, §124.5 (1997), which directs state agencies to adopt the rules of the General Services Commission based on that Commission's State Disparity Study. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule.

Comments on the proposed new section may be submitted to Jim Loyd, Executive Director, Texas Health Care Information Council, Brown-Heatly Building, 4900 North Lamar, Room-3407, Austin, Texas 78751-2399 no later than 30 days from the date that the proposed action is published in the *Texas Register*.

The new section is proposed under House Bill 1, General Appropriations Act, 75th Legislature, Article IX, §124.5 (1997). The Council interprets this section as requiring it to adopt the rules of the General Services Commission based on the Commission's State Diversity Study.

No statutory or code section is affected by the proposed new section.

§1301.71. Historically Underutilized Business (HUB) Program.

The Texas Health Care Information Council adopts the rules of the General Services Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code, Part V, Subchapter B, Chapter 111, §§111.11-111.16.

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 21, 1998.

TRD-9814903

Jim Loyd

Executive Director

Texas Health Care Information Council

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 424-6490



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 53. Finance

Subchapter I. Protest Procedures for Vendors

31 TAC §53.70

The Texas Parks and Wildlife Department proposes new §53.70, concerning protest procedures for vendors. The proposed new section is necessary to provide an opportunity to vendors to administratively process protests of department procedures relating to purchasing issues.

Melanie Callahan, Finance Director, has determined that for each of the first five years that the proposed new section is in effect, there will be no negative financial implication to state or local governments as a result of enforcing or administering the proposed new section.

Ms. Callahan also has determined that for each of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the rules as proposed will be increased vendor participation and satisfaction with the consistency and fairness of department purchasing rules.

There will be no effect on small businesses. There is no economic costs to persons required to comply with the rules as

proposed because such rules in similar have been in effect at General Services Commission for some time. The Commission handles the bulk of state purchasing.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, Section 2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Judy Doran, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4329 or 1-800-792-1112.

The new section is proposed under Government Code, Section 2155.076 which requires the department as a state agency to adopt rules for resolving vendor protests relating to purchasing issues.

The new rule as proposed affects Government Code, Section 2155.076.

§53.70. Vendor Protest Procedure.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Director of Acquisition and Logistical Services. Such protests must be in writing and received in the director's office within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protesting party to the department and other interested parties. For the purpose of this section "other interested persons" means at least all vendors who have submitted bids or proposals for the contract involved.

(b) If the vendor wants the solicitation or the award process to be terminated, he must make that request in his protest and state the reasons for such termination of the process. The director will review such request and, after consultation with the using division and the appropriate manager, make a written determination within three business days of receipt of the request to terminate from the vendor.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the identifiable interested parties.

(d) The director shall have the authority, absent a proper appeal to the executive director of the department, to settle and resolve the dispute concerning the solicitation or award of a contract. The director may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the director will issue a written determination on the protest:

(1) if the director determines that no violation of rules or statutes he shall so inform the protesting party, the and other interested parties by letter which set forth the reasons for the determination; or

(2) if the director determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he will so inform the protesting party and the other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(f) The director's determination on a protest may be appealed by an interested party to the executive director of the department. An appeal of the director's determination must be in writing and must be received in the executive director's office no later than ten working days after the date of the director's determination. The appeal shall be limited to review of the director's determination. Copies of the appeal must be mailed or delivered to other interested parties within ten working days after the date of the director's decision and must contain a certification that such copies have been provided as directed in this section.

(g) The appropriate lawyer for the agency must review the protest, the director's determination and the appeal and prepare a written opinion with recommendations to the executive director.

(h) A decision issued by the commission in open meeting, or in writing by the executive director, shall be the final administrative action of the department.

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

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

TRD-9814855

Bill Harvey
Regulatory Coordinator

Texas Parks and Wildlife Department

Proposed date of adoption: November 1, 1998

For further information, please call: 389-4642



Chapter 59. Parks

Subchapter A. Park Entrance and Park User Fees

31 TAC §59.2

The Texas Parks and Wildlife Department proposes an amendment to §59.2, concerning Park Entrance and Use Fees. The amendment is necessary to implement the provisions of Senate Bill 991, enacted by the 75th Texas Legislature, which permitted individuals with physical or mental impairments substantially limiting one or more major life activities to apply for a state parklands passport, and authorized the Parks and Wildlife Commission to establish eligibility requirements and privileges for such persons. The amendment will function to establish criteria for eligibility and to establish a discounted entrance fee for persons holding a parklands passport under the eligibility provisions set forth in the proposed rule.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed amendment is in effect, there will be no fiscal implications to any unit of state government other than the Parks and Wildlife Department as a result of enforcing or administering the

proposed amendment. The estimated fiscal impact to the Parks and Wildlife Department will be a maximum of \$114,450 per fiscal year, although the actual cost might be substantially lower. The department bases the estimate on figures provided by the Governor's Committee on People with Disabilities indicating that approximately 10% of the general population is affected by a physical or mental impairment substantially limiting one or more life activities. The Department recorded approximately 6 million paid visits to state parks in fiscal year 1997 at an average of \$3.00 per visit, and estimates that approximately 1.0% of visitation is by persons who would qualify for a parklands passport under the proposed rule. Thus, the 50% discount set forth in the proposed amendment would yield the maximum value stated previously. There will be no fiscal implications to units of local government as a result of enforcing or administering the proposed amendment.

Mr. Macdonald also has determined that for each of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be the encouragement of citizens with disabilities to enjoy the state park system.

There will be no effect on small businesses. There are no economic costs to persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Ms. Sudie Poole, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4484 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, §13.018(e), which authorizes the Commission to establish eligibility requirements and privileges available to the holder of a state parklands passport.

The amendment affects Parks and Wildlife Code, Chapter 13.

§59.2. *Park Entrance and Park User Fees.*

(a)-(k) (No change.)

(l) An individual with a documented physical or mental impairment may be issued a parklands passport under the provisions of this section.

(1) Eligibility requirements. To be eligible to receive a parklands passport under this section, an individual with a physical or mental impairment that substantially limits one or more major life activities must:

(A) have been medically determined to be permanently disabled as a result of such mental or physical impairment (including blindness) for purposes of receiving benefits under the Social Security Act; and

(B) be currently receiving such benefits.

(2) Application procedure. An individual applying for a parklands passport under this subsection shall:

(A) apply in person at Texas Parks and Wildlife Department Headquarters or at any park or other office designated by the department;

(B) submit positive identification and either an Award of Benefits Letter, or a Statement of Benefits, from the Social Security Administration attesting to the applicant's permanent disability;

(C) submit an affidavit or attestation in a form approved by the Department certifying that the applicant meets the requirements of paragraph (1) of this subsection.

(3) Privileges. A parklands passport used for the purposes of this subsection shall discount entry fees to State Parks for the individual pass holder for a period of one year from the date of issuance. The discount will be 50% of the established park entry fee, rounded up to the nearest whole dollar amount. The pass shall be nontransferable, but shall also authorize discounted entry for one person accompanying the pass holder, if the pass holder needs assistance while visiting the State Park. For the purposes of this subsection, 'accompanying' means entering a park simultaneously with the pass holder.

(m) [(H)] A duplicate state parklands passport may be issued for use on additionally owned motor vehicles. A replacement for a state parklands passport may be issued when the original registration or windshield sticker is lost, stolen, damaged, or the motor vehicle is sold, traded, or stolen, or when the motor vehicle windshield is replaced.

(n) [(H)] Entrance fees established in subsections (b) and (d) of this section will apply to all private aircraft noncommercial motorized vehicles which includes two or more-wheeled vehicles. Commercial, quasi-public, or public buses or other vehicles are excluded.

(o) [(H)] Persons entering parks by bus, where entrance and use fees are charged on a per-car basis, will be charged as follows: adults, \$1.00-\$3.00 each, minimum \$4.00-\$20; children 12 years of age and under, \$.50-\$1.50 each, minimum \$4.00-\$20.

(p) [(H)] Students, teachers, bus drivers, and children on group, school-sponsored visits to historic sites or parks for educational purposes may enter at the rate of \$.50-\$1.00 per person at historic sites where a tour fee is charged or at a park where entrance and use fees are charged on a per-vehicle basis. The group or class must be accompanied by an adult supervisor(s). The \$.50-\$1.00 per person fee applies to individuals from all public or private schools, colleges, and universities offering accredited courses.

(q) [(H)] Students of any age are entitled to the student historic site tour fee. Students 19 and over are required to present a current, valid student identification card.

(r) [(H)] Persons entering parks on foot, bicycle, or by boat where entrance and use fees are charged on a per-car basis will be charged an individual rate of \$1.00-\$3.00 for adults and \$.50-\$1.50 for children 12 years of age and under.

(s) [(H)] The valid time period for daily entrance fees will be:

(1) for day use, the time period encompassing the day-use opening hours of the park on the date on which admission is paid; and

(2) for overnight use, a 24-hour period beginning at 2 p.m. on the date admission is paid.

(t) [(s)] At the discretion of the executive director, any person or persons may be exempted from the provisions of this section if the entry of such person or persons to a park or parks is necessary or desirable in order to provide a service for the state. The executive director is authorized to issue such entrance fee waivers under certain circumstances and conditions.

(u) [(t)] The executive director is authorized to establish an entrance fee in accordance with these sections at any site hereafter established as a state park when he deems such action is appropriate and in accord with applicable statutes.

(v) [(u)] When an annual or seasonal permit is offered for entrance in lieu of a daily fee, the executive director is authorized to establish a fee for a replacement and/or a duplicate permit.

(w) [(v)] Any fees established in this section may be waived or reduced at the discretion of the executive director for public use of a park during special events or exhibitions.

(x) [(w)] The executive director may designate the amount of use fee and entrance fee within the total amount provided for by this section.

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

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

TRD-9814852

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 389-4775



Chapter 65. Wildlife

Subchapter G. Threatened and Endangered Nongame Species

The Texas Parks and Wildlife Department proposes the repeal of §§65.180 and 65.181, amendments to §§65.171-65.173, and 65.174; and new §§65.175 and 65.176, concerning Threatened and Endangered Species. The repeals, amendments, and new sections are necessary to eliminate regulatory inconsistency with respect to threatened and endangered species, to provide for documentation of lawfully held specimens, and to remove unnecessary and redundant regulations. The repeals, amendments, and new sections will function to provide uniform regulations governing the possession of threatened and endangered species; set forth identification standards, and establish penalties for violations.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed repeals, amendments, and new sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed rules.

Mr. Macdonald also has determined that for each of the first five years the proposed repeals, amendments and new sections are in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be simpler regulations that are less burdensome to the public while executing the commission's

statutory obligations to manage the wildlife resources of this state.

There will be no effect on small businesses. There are no economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Peggy Horner, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 912-7047 or 1-800-792-1112.

31 TAC §§65.171-65.176

The amendments and new sections are proposed under Parks and Wildlife Code, Chapter 67, which give the commission the authority to establish any limitations on the take, possession, propagation, transportation, importation, exportation, sale, and offering for sale of nongame fish and wildlife necessary to manage those species, and Parks and Wildlife Code, Chapter 68, which provides the Commission with the authority to establish regulations governing the take, possession, transportation, exportation, propagation, sale, and offering for sale of endangered fish and wildlife.

The repeals, amendments, and new sections affect Parks and Wildlife Code, Chapters 67, and 68.

§65.171. *General Provisions [Closed Seasons].*

(a) Except as otherwise provided in this subchapter or Parks and Wildlife Code, Chapters 67 or 68, no person may:

(1) take, possess, propagate, transport, export, sell or offer for sale, or ship any species of fish or wildlife listed in this subchapter as threatened or endangered; or

(2) possess, transport, import, export, sell, or offer for sale goods made from fish or wildlife listed [~~in this subchapter~~] as threatened or endangered]; ~~except as provided in subsection (b) of this section~~].

(b) Any person may possess, transport, import, export, sell, or offer for sale goods made from fish or wildlife listed in this subchapter as threatened, provided the person possesses proof that the goods were obtained from lawfully taken animals.

§65.172. *Threatened Species.*

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:

Figure 1: 31 TAC §65.172

§65.173. *Permit] Exceptions. [No permit is required to]:*

(a) Any person may [~~take or~~] transport threatened or endangered species [~~listed in this subchapter~~] to the nearest Department of Health or medical facility if the species poses an immediate threat to human safety or welfare.];

[(2) transport within this state mounted or preserved specimens of species listed in this subchapter, provided that any transfer is:]

~~[(A) without monetary consideration and is between educational or research institutions, nonprofit municipal zoological gardens, or nonprofit foundations or associations; and]~~

~~[(B) the specimens were originally obtained under a valid scientific or zoological permit. A copy of the voucher or other evidence of transfer shall be forwarded to the department within 20 days following the transfer, and shall specifically indicate the types and numbers of specimens transferred.]~~

~~(b) [(3)] Any person may possess or transport lawfully obtained live, mounted, or preserved specimens of threatened or endangered species, including specimens acquired [legally collected] in another state, provided the person also possesses at least one of the following:~~

~~(1) [; except that] a copy of an [a valid] out-of-state permit authorizing the possession of the specimens in the state of origin, valid at the time the specimen enters Texas; [must accompany each specimen during transport within this state and must be retained by the person or institution possessing the specimen.]~~

~~(2) a bill of sale identifying the source of the specimen;~~
~~or~~

~~(3) a notarized affidavit stating the source of the specimen and that the specimen(s) was legally obtained.~~

~~§65.174. Special Provisions. [Exceptions.]~~

~~[Persons who as of the effective date of this subsection lawfully possessed an endangered animal that as of the effective date of this subsection became designated as threatened nongame may continue to possess the animal for the duration of the animal's life, provided those persons continue to renew the permits authorizing such possession. Offspring conceived by permitted animals prior to the effective date of this subsection may also be lawfully possessed, but offspring conceived after the effective date of this subsection shall not be retained by permittees.] No person [authorized to possess a threatened nongame animal by the provisions of this subsection] may [;]~~

~~[(1)] release a threatened or endangered species except as specifically provided by the department in a letter of authorization issued prior to release. [acquire additional threatened or endangered animals unless authorized to do so under a permit issued under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C; or]~~

~~[(2) transfer possession of animals affected by this subsection, other than to:]~~

~~[(A) a person authorized to receive such species under the terms of a permit issued by authority of Parks and Wildlife Code, Chapter 43, Subchapter C; or~~

~~[(B) an out-of state destination.]~~

~~§65.175. Permanent Identification.~~

~~Every specimen possessed under the provisions of this subchapter or the provisions of Parks and Wildlife Code, Chapter 68, shall be permanently tagged, tattooed, banded, or implanted with a passive inductive transponder (PIT) tag bearing the possessor's name and phone number.~~

~~§65.176. Violations and Penalties.~~

~~Penalties for violations of this subchapter:~~

~~(1) for species listed in §65.172 of this title (relating to Threatened Species) are prescribed by Parks and Wildlife Code, Chapter 67; and~~

~~(2) for species listed in accordance with Parks and Wildlife Code, Chapter 68, are prescribed by Parks and Wildlife Code, Chapter 68.~~

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 18, 1998.

TRD-9814853

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Proposed date of adoption: November 1, 1998

For further information, please call: 389-4775

◆ ◆ ◆
31 TAC §65.180, §65.181

(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 Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Parks and Wildlife Code, Chapter 67, which give the commission the authority to establish any limitations on the take, possession, propagation, transportation, importation, exportation, sale, and offering for sale of nongame fish and wildlife necessary to manage those species, and Parks and Wildlife Code, Chapter 68, which provides the Commission with the authority to establish regulations governing the take, possession, transportation, exportation, propagation, sale, and offering for sale of endangered fish and wildlife.

The repeals affect Parks and Wildlife Code, Chapters 67, and 68.

§ 65.180. *Endangered Species.*

§65.181. *Penalties.*

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 18, 1998.

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Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Proposed date of adoption: November 1, 1998

For further information, please call: 389-4775

◆ ◆ ◆
Subchapter R. Deer Antlers

31 TAC §65.401

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

The Texas Parks and Wildlife Department proposes the repeal of §65.401, concerning Purchase and Sale of Deer Antlers. The

repeal is necessary to eliminate a regulation made redundant by the passage of House Bill 2542 by the 75th Legislature, which also eliminated the commission's statutory authority to regulate the sale of inedible deer parts. The repeal will function to remove a regulation the department no longer has any authority to enforce.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed repeal is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed repeal.

Mr. Macdonald also has determined that for each of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal as proposed will be the elimination of a superfluous regulation.

There will be no effect on small businesses. There are no economic costs to persons required to comply with the repeal as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the repeal as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed repeal.

Comments on the proposed repeal may be submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4774 or 1-800-792-1112.

The repeal is proposed under the provisions House Bill 2542, enacted by the 75th Legislature, Regular Session, 1997, which eliminated the commission's authority to regulate the sale of inedible deer parts.

The repeal affects Parks and Wildlife Code, Chapter 62.

§ 65.401. *Purchase and Sale of Deer Antlers.*

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 18, 1998.

TRD-9814851

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Proposed date of adoption: November 1, 1998

For further information, please call: 389-4775



Part X. Texas Water Development Board

Chapter 360. Designation of River and Coastal Basins

31 TAC §§360.1-360.3

The Texas Water Development Board (board) proposes new §§360.1 - 360.3, comprising new 31 TAC Chapter 360, concerning designation of river basins and coastal basins. The

new sections delineate the boundaries of Texas' river basins and coastal basins by adopting by reference digital files stored on CD-Rom of maps on file with the board on which the boundary lines are drawn.

Sections 360.1 - 360.2 describe the scope of the new chapter as the delineation of river and coastal basins, and provide definitions to the term "quad maps" as U.S. Geological Service quadrilateral maps of a specified scale. Section 360.3 delineates the 15 river basins and eight coastal basins by adopting by reference digital files stored on CD-Rom of the U.S. Geological Service quad maps on which the boundary lines of the basins are drawn. These digital files may be viewed or copies obtained at the board's office.

The river basin boundaries were delineated using quad maps to first determine the direction of sheet flow and stream flow for a watershed. The watersheds were connected such that all stream flow originating in the connecting watersheds that is discharged through a single outlet at the state's boundary or into the Gulf of Mexico is designated as a river basin, the boundaries of which are outlined on the quad maps.

The coastal basins were delineated using quad maps to determine the direction of sheet flow and flow for each watershed. Those collective watersheds that discharge into a common tidal water area between the drainage of the river basins were designated as the coastal basins.

There were a number of exceptions from the above criteria that were recognized in the delineation of the river basins. The board has maintained delineations of the river basin and coastal basin boundaries for a long period. While minor changes are proposed on the maps to correct technical inaccuracies of the boundaries, the board proposes not to change the basic underlying rationales and historical basis for the actual division of the state into various river and coastal basins. This rests on the reliance of the state's existing water rights permitting system on these boundaries, and because Senate Bill 1, 75th Texas Legislature, prohibits the redrawing of boundaries in an attempt to circumvent the requirements for obtaining an interbasin transfer permit from the Texas Natural Resource Conservation Commission. The exceptions from the standard criteria used in delineating river basins boundaries are as follows. The watersheds that delineate the San Antonio basin were kept as a separate river basin called the San Antonio River Basin rather than combining with the Guadalupe River Basin (into which they flow). This is consistent with the manner in which these basins have been designated historically by the board. The Neches River Basin and Sabine River basin are proposed to be designated as separate river basins even though they join in Sabine lake before entering the Neches Channel and subsequently the Gulf of Mexico. This also is consistent with the manner in which these basins have been designated historically. The Cypress or Twelve Bayou Basin has been designated as a separate river basin called the Cypress Creek Basin, even though it discharges into Caddo Lake, which crosses the state line, rather than itself discharging through a single outlet at the state line. Were the lake not over the state line, the basin would discharge at the state line. This again is consistent with the historical designation of this basin. The watersheds of James Bayou, Black Bayou, Cross Bayou and Paw Paw Bayou are proposed as part of the Cypress Creek Basin, again consistent with the historical designation of this basin. These watersheds flow into Twelve Mile Bayou in Louisiana, into which the Cypress River also flows. Even though these watersheds have their own

outlets at the state line, they are part of the basin into which the Cypress flows, and thus are appropriately combined with the Cypress Basin. This is consistent with historical designation of these watersheds. The watersheds of Palo Duro Creek, Coldwater Creek, and Wolf Creek are designated as part of the Canadian River Basin, even though they flow into the North Canadian River, which connects back to the Canadian River in Oklahoma rather than in Texas. Thus, although the watersheds have their own outlets at the state line, they are part of the larger Canadian River Basin and are so designated. This again is consistent with the historical designation of this basin.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Ms. Todd also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to designate by rule the river and coastal basins of the state, and to ensure statutory compliance by Texas Water Development Board in the planning and management of the state's water resources. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Comments on the proposed new sections will be accepted for 30 days following publication and may be submitted to Suzanne Schwartz, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and §16.051, which requires the board to define and designate river basins and watersheds by rule.

The statutory provisions affected by the new sections are Texas Water Code, Chapter 16, §§16.051 and 11.085.

§360.1. Scope of Chapter.

This chapter shall serve as the board's delineation of river basins and coastal basins pursuant to the requirement of the Texas Water Code, §16.051(c).

§360.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code, Chapter 16 and not defined here shall have the meanings provided in Chapter 16. Quad map - Official 1 to 24,000 foot maps produced by the United States Geological Survey on which river basin and coastal basin boundaries are delineated.

§360.3. Designation of River Basins and Coastal Basins.

(a) The Canadian River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(a)

(b) The Red River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn

thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(b)

(c) The Sulphur River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(c)

(d) The Cypress Creek basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(d)

(e) The Sabine River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(e)

(f) The Neches River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(f)

(g) The Neches-Trinity coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(g)

(h) The Trinity River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(h)

(i) The Trinity-San Jacinto coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(i)

(j) The San Jacinto River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(j)

(k) The San Jacinto-Brazos coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.

Figure: 31 TAC 360.3(k)

(l) The Brazos River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files

stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(l)

(m) The Brazos-Colorado coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(m)

(n) The Colorado River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(n)

(o) The Colorado-Lavaca coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(o)

(p) The Lavaca River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(p)

(q) The Lavaca-Guadalupe coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(q)

(r) The Guadalupe River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(r)

(s) The San Antonio River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(s)

(t) The San Antonio-Nueces coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(t)

(u) The Nueces River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(u)

(v) The Nueces-Rio Grande coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(v)

(w) The Rio Grande River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files stored on CD-Rom of these quad maps with the basin lines drawn thereon are adopted by reference and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC 360.3(w)

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 17, 1998.

TRD-9814764

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 19, 1998

For further information, please call: 463-7981

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Subchapter A. Practice and Procedure

34 TAC §1.33

The Comptroller of Public Accounts proposes an amendment to §1.33, concerning discovery. The amendment clarifies the filing procedures for written requests for admission in contested case proceedings before the administrative law judges.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to John Neel, Chief, Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed 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, §111.009 and §111.105.

§1.33. *Discovery.*

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

(g) Request for admission.

(1) At any time after a contested case has been assigned to a hearings attorney [the issuance of a Position Letter], a party may serve upon any other party a written request for the admission, for purposes of the pending contested case only, of the truth of any matter within the scope of subsection (b) of this section set forth in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Whenever a party is represented by an attorney or representative of record, service of a request for admissions shall be made on his attorney or representative. A true copy of any [a request for admissions or of a written answer or] objection to the request together with a copy of the request [- together with proof of the service thereof as provided in §1.32 of this title (relating to Service).] shall be filed promptly in the administrative law judge clerk's office by the party making the objection [it]. If no objection is filed to a request, the written answer and the request shall be filed with the assigned administrative law judge by the hearings attorney no later than seven days prior to the date of the oral hearing or by the closing of the record of a written submission hearing.

(2)-(3) (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 16, 1998.

TRD-9814708

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 463-4062



Chapter 3. Tax Administration

Subchapter L. Motor Fuel Tax

34 TAC §3.176

The Comptroller of Public Accounts proposes an amendment to §3.176, concerning fuel used by power take-off and auxiliary power units. The name of this section is being amended to more clearly describe the information provided in this section.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is

no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed 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, §153.119 and §153.222.

§3.176. *Metering Devices Used to Claim Refund of Tax on Fuel Used in Power Take-Off and Auxiliary Power Units [Fuel Used by Power Take-Off and Auxiliary Power Units] (Tax Code, §153.119 and §153.222).*

(a) Metering devices. The comptroller will accept the use of metering devices as a basis for determining the quantity of gasoline or diesel fuel consumed in the operation of auxiliary power units or power take-off [power take-off] equipment mounted on a motor vehicle.

(b) Design specifications. The meters shall be designed to separately measure the fuel used to propel the motor vehicle from the fuel used in the power take-off [power take-off] or auxiliary power unit.

(1) (No change.)

(2) The metering device must be designed so that the gasoline or diesel fuel will flow through and be recorded by the metering device only when the motor vehicle's spring-loaded air-parking brake or other approved air-parking brake, or hydraulic parking brake is engaged, or when any hydraulic power take-off [power take-off] unit which can be operated only when the motor vehicle is stationary and is engaged, and providing that said gasoline or diesel fuel will at all times by-pass the metering device and flow through a by-pass line when the air brakes, hydraulic brakes, or hydraulic power take-off [power take-off] units described above are disengaged, or when such motor vehicle is propelled in any manner by such fuels; and

(3) The metering device must be installed on the motor vehicle and maintained by the owner or operator thereof in a manner in which it will operate at all times within the maintenance tolerances set forth in Handbook 44 for slow-flow meters.

(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 16, 1998.

TRD-9814709

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 463-4062



Chapter 5. Funds Management (Fiscal Affairs)

Subchapter D. Claims Processing-Payroll

34 TAC §5.48

The Comptroller of Public Accounts proposes amendments to §5.48, concerning deductions for contributions to charitable organizations. The purposes of the amendments are as follows.

The primary purpose is to address legislative changes made during the 75th regular session of the legislature. Senate Bill No. 645 amended the Government Code, §659.148(d), to authorize the comptroller to decline to charge an administrative fee to cover costs incurred while administering the charitable contribution deduction, if the comptroller determines the costs that would be covered by the fee are insignificant. House Bill No. 2491 added §659.1311 to the Government Code for the purpose of authorizing a public junior college not to participate in the state employee charitable contribution program. Finally, Senate Bill No. 1036 authorized the selection of a charitable organization to be the state campaign manager or a local campaign manager if no federated community campaign organization applied to be the manager.

Another purpose of the amendments is to make changes to §5.48 that are necessary or desirable in light of several state employee charitable campaigns that have been conducted since the section was first adopted. These amendments would affect the definition of "campaign year" for employees of institutions of higher education who are paid every other week, the deadline for receipt of deduction authorization forms, the review of those forms, the manner in which an employee may change the amount of or cancel a deduction, the number of charitable organizations an employee may designate to receive the employee's deductions, applications for direct deposit of deductions by institutions of higher education, and the deadlines for submission of campaign reports.

The final purpose of the amendments is to reflect the legislature's transfer of the charitable deduction statutes from the Revised Statutes, Article 6813h, to the Government Code, Chapter 659, Subchapter H

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing more accurate information about the payroll deduction to make contributions to charitable organizations. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be addressed to Kenny McLeskey, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendments are proposed under the Government Code, §§659.132(f)-(g), (j), 659.133(b), 659.136(c), 659.137(a), 659.140(e)(6), 659.141(6), 659.142(d), 659.143(e)(5),

659.144(c)(4), and 659.148(d), which generally authorize the comptroller to adopt rules for administration of the payroll deduction to make contributions to charitable organizations.

The amendments implement the Government Code, Chapter 659, Subchapter H.

§5.48. *Deductions for Contributions to Charitable Organizations.* (Government Code, Chapter 659, Subchapter H [Texas Civil Statutes, Article 6813h]).

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

(1) Campaign coordinator - The state employee who has volunteered and been designated by the chief administrator of a state agency to coordinate the state employee charitable campaign for that agency.

(2) ~~(4)~~ Campaign material - A logo identifying the state employee charitable campaign, a campaign slogan, a campaign film, a campaign donor brochure, a donor authorization form, and other materials as approved by the state policy committee.

(3) ~~(2)~~ Campaign year - For salary or wages paid once each month, the payroll periods from December 1st through November 30th. For salary or wages paid twice each month, the payroll periods from December 16th through December 15th. For salary or wages paid every other week by a state agency that is not an institution of higher education, the 26 consecutive payroll periods beginning with the period that corresponds to the payment of salary or wages occurring on or closest to, but not after, December 31st. For salary or wages paid every other week by an institution of higher education, the 26 consecutive payroll periods beginning with the period designated by the institution if the period is entirely within December.

(4) ~~(3)~~ Charitable organization - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(5) ~~(4)~~ Comptroller - The comptroller of public accounts for the State of Texas.

(6) ~~(5)~~ Comptroller's electronic funds transfer system - The system authorized by the Government Code, §403.016, that the comptroller uses to initiate payments instead of issuing warrants.

(7) ~~(6)~~ Deduction - The amount subtracted from a state employee's salary or wages to make a contribution to a local campaign manager or a statewide federation or fund that has been assigned a payee identification number by the comptroller.

(8) ~~(7)~~ Designated representative - A state employee volunteer or other individual named by a local campaign manager or a statewide federation or fund as its representative.

(9) ~~(8)~~ Direct services - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(10) ~~(9)~~ Eligible charitable organization - A charitable organization that is determined to be eligible to participate in the state employee charitable campaign as provided by this section and the Government Code, §659.146[Texas Civil Statutes, Article 6813h].

(11) ~~(10)~~ Eligible local charitable organization - A local charitable organization that has been approved for local participation in the state employee charitable campaign.

(12) ~~(11)~~ Employer - A state agency that employs at least one state employee.

(13) [(12)] Federated community campaign organization - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(14) [(13)] Federation or fund - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(15) [(14)] Generic campaign materials - Campaign materials that have not been modified to reflect a particular local campaign area's participants or a local employee committee.

(16) [(15)] Health and human services - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(17) [(16)] Holiday - A state or national holiday as specified by [the General Appropriations Act or] the Government Code, §662.003[§§662.001-662.010]. The term does not include a state or national holiday if the General Appropriations Act prohibits state agencies from observing the holiday.

(18) [(17)] Include - term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(19) [(18)] Indirect services - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(20) [(19)] Institution of higher education - Has the meaning assigned by the Education Code, §61.003. The term does not include a public junior college that has decided not to participate in the state employee charitable contribution program in accordance with subsection (x) of this section

(21) [(20)] Local campaign area - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(22) [(21)] Local campaign manager - A federated community campaign organization or a charitable organization that is selected by a local employee committee as provided by this section and the Government Code, §659.144[Texas Civil Statutes, Article 6813h].

(23) [(22)] Local campaign materials - Campaign materials that have been modified to reflect a particular local campaign area's participants and the local employee committee for the area if the state policy committee has approved the modifications, and additional materials that the state policy committee has approved because they are based on and consistent with the campaign materials approved by the committee.

(24) [(23)] Local charitable organization - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(25) [(24)] Local employee committee - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(26) [(25)] May not - A prohibition. The term does not mean "might not" or its equivalents.

(27) [(26)] Payee identification number - The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller for the State of Texas.

(28) Public junior college - Has the meaning assigned by the Education Code, §61.003. The term includes a community college.

(29) [(27)] Salary or wages - Base salary or wages, longevity pay, or hazardous duty pay.

(30) [(28)] State advisory committee - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(31) [(29)] State agency - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(32) [(30)] State campaign manager - A federated community campaign organization or a charitable organization that is selected by the state policy committee as provided by this section to coordinate state employee charitable campaign operations with local campaign managers.

(33) [(31)] State employee - An employee of a state agency. The term does not include an employee of a public junior college that is not participating in the state employee charitable contribution program in accordance with subsection (x) of this section.

(34) [(32)] State employee charitable campaign - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(35) State employee charitable contribution program - The charitable deduction program authorized by the Government Code, Chapter 659, Subchapter D (exclusive of the deductions authorized by the Government Code, §659.1311(b)-(c)).

(36) [(33)] State policy committee - Has the meaning assigned by the Government Code, §659.131[Texas Civil Statutes, Article 6813h].

(37) [(34)] Statewide federation or fund - A federation or fund that has been approved for statewide participation in the state employee charitable campaign.

(38) [(35)] Uniform statewide payroll/personnel system - A system in which uniform statewide payroll procedures are followed.

(39) [(36)] Workday - A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions.

(A) A state employee who is not employed by an institution of higher education may authorize not more than three monthly deductions from the employee's salary or wages.

(B) Each institution of higher education shall establish a maximum number of monthly deductions that an employee of the institution may authorize.

(C) A state employee may authorize only one deduction to any particular statewide federation or fund or local campaign manager.

(D) [(B)] A state employee may authorize a deduction only if the employee:

(i) properly completes an authorization form; and

(ii) submits the form to a designated representative of the statewide federation or fund or the local campaign manager to which the deduction will be paid.

(E) [(C)] Except as provided in this subparagraph, a state employee may authorize a deduction only during a state employee charitable campaign.

(i) State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system. A state agency covered by that law shall permit its state employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. Those authorizations may be made even if a state employee charitable campaign is not occurring when the authorizations are made.

(ii) A state employee who begins employment with the state may authorize a deduction if the employee's employer receives the employee's properly completed authorization form not later than the 30th day after the employee's first day of employment with the agency. A new state employee may authorize a deduction even if a state employee charitable campaign is not occurring when the employment begins or the form is provided. This clause does not apply to a state employee who transfers from one state agency to a second state agency.

(F) ~~(D)~~ Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee authorizing an incorrect amount of a deduction.

(2) Minimum amount of deductions. If a state employee authorizes a deduction, the minimum amount of the deduction is two dollars per month. This minimum applies to each deduction authorized by the employee. For example, if the employee authorizes two deductions, then the amount of each of those deductions must be at least two dollars per month.

(3) Changes in the amount of deductions.

(A) At any time during a campaign year, a state employee may authorize a change in the amount to be deducted from the employee's salary or wages during that year.

(B) A state employee may authorize a change only by submitting a written authorization to the employee's employer~~[if the employee:]~~. The authorization may be a properly completed authorization form or another type of written communication that complies with subparagraph (C) of this paragraph.

~~[(i) properly completes an authorization form; and]~~

~~[(ii) submits the form to the employee's employer.]~~

(C) To be valid, a written communication, other than an authorization form, that a state employee submits for the purpose of authorizing a change must specify or contain:

(i) the employee's name and social security number;

(ii) the name of the employee's employer;

(iii) the six-digit code number of the charity for which the change is being authorized or, if the number is unknown, the charity's name;

(iv) the new amount to be deducted;

(v) the effective date of the change; and

(vi) the employee's original signature.

(D) ~~(E)~~ A state employee may not change the statewide federation or fund or the local campaign manager that receives deducted amounts if the change would be provided outside the time a state employee charitable campaign is being conducted.

(E) ~~(D)~~ A state employee may not change the eligible charitable organizations designated to receive deducted amounts paid to a statewide federation or fund if the change would be provided outside the time a state employee charitable campaign is being conducted.

(F) ~~(E)~~ A state employee may not change the eligible local charitable organizations designated to receive deducted amounts paid to a local campaign manager if the change would be provided outside the time a state employee charitable campaign is being conducted.

(4)-(5) (No change.)

(6) Cancellation of deductions.

(A) A state employee may cancel a deduction at any time~~[- A cancellation is effective only]~~ by submitting a written cancellation notice to the employee's employer. The notice may be a [if the employee] properly completed[completes an] authorization form or another type of written communication that complies with subparagraph (B) of this paragraph [and submits the form to the employee's employer].

(B) To be valid, a written communication, other than an authorization form, that a state employee submits for the purpose of canceling a deduction must specify or contain:

(i) the employee's name and social security number;

(ii) the name of the employee's employer;

(iii) the six-digit code number of the charity for which the cancellation is being made or, if the number is unknown, the charity's name;

(iv) the amount of the deduction to be canceled;

(v) the effective date of the cancellation; and

(vi) the employee's original signature.

(7) (No change.)

(c) Designation of charitable organizations to receive deducted amounts.

(1) Receiving deducted amounts through local campaign managers.

(A) This subparagraph applies to a state employee only if not employed by an institution of higher education. A state employee's authorization of a deduction to a local campaign manager may designate not more than nine [three] eligible local charitable organizations to receive the deducted amounts through the manager.

(B) This subparagraph applies to a state employee only if employed by an institution of higher education. An institution of higher education shall specify the maximum number of eligible local charitable organizations that may receive a state employee's deducted amounts through a local campaign manager. If employed by that institution, a state employee's authorization of a deduction to a local campaign manager may designate not more than that number of eligible local charitable organizations to receive the deducted amounts through the manager.

(C) [(i)] If a state employee's authorization of a deduction to a local campaign manager designates only one eligible local charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the local campaign manager.

(D) [(ii)] If a state employee's [aa] authorization of a deduction to a local campaign manager designates more than one eligible local charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

(E) [(B)] If an eligible local charitable organization that a state employee designates under subparagraph (A) or (B) of this paragraph is a federation or fund, then the federation or fund shall distribute the deducted amounts it receives to its affiliated eligible charitable organizations according to its policy.

(F) [(C)] This subparagraph applies if a state employee's authorization of a deduction to a local campaign manager does not contain a valid designation. The undesignated initial distribution amounts with respect to the employee for eligible local charitable organizations and statewide federations or funds shall be determined according to this subparagraph.

(i) Only an eligible local charitable organization that has been approved to participate in the local campaign area may have an undesignated initial distribution amount. Only a statewide federation or fund to which state employees in the local campaign area have authorized deductions may have an undesignated initial distribution amount.

(ii) The undesignated initial distribution amount for an eligible local charitable organization is equal to the distribution percentage for the organization multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the organization's total designated initial distribution amount as determined or specified under subparagraphs (C) and (D) [subparagraph (A)] of this paragraph for all state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraphs (C) and (D) [subparagraph (A)] of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(iii) The undesignated initial distribution amount for a statewide federation or fund is equal to the distribution percentage for the federation or fund multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the total amount of deductions authorized to the federation or fund by state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraphs (C) and (D) [subparagraph (A)] of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(G) [(D)] The following example illustrates the calculation of undesignated initial distribution amounts according to subparagraph (F) [(C)] of this paragraph.

(i) The following assumptions apply in this example.

(I) State employees in the Austin local campaign area have authorized \$15,000 in deductions to the Austin local

campaign manager. Of that amount, state employees have designated \$10,000 for distribution to the following eligible local charitable organizations. Organization 1 has been designated to receive \$5,000. Organization 2 has been designated to receive \$3,000. And Organization 3 has been designated to receive \$2,000.

(II) Of the \$15,000 in authorized deductions to the Austin local campaign manager, \$5,000 is undesignated.

(III) State employees in the Austin local campaign area have authorized total deductions of \$10,000 to the following statewide federations or funds. Organizations 4 and 5 have each been authorized to receive \$5,000.

(ii) The calculation of undesignated initial distribution amounts in this subparagraph relates only to the \$5,000 in undesignated deductions to the Austin local campaign manager. This is because an eligible local charitable organization or a statewide federation or fund has an undesignated initial distribution amount only with respect to undesignated deductions.

(iii) The first step is to determine the designated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. That amount for each organization is the total amount of deductions that state employees have designated to the organization. Therefore, the designated initial distribution amount for Organization 1 is \$5,000, Organization 2 is \$3,000, and Organization 3 is \$2,000.

(iv) The second step is to determine the distribution percentage for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. The distribution percentage must be determined according to subparagraph (F)(ii) [(C)(ii)] of this paragraph. The distribution percentage for each organization is as follows:

(I) Organization 1 - 25%;

(II) Organization 2 - 15%;

(III) Organization 3 - 10%.

(v) The third step is to determine the distribution percentage for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The distribution percentage must be determined according to subparagraph (F)(iii) [(C)(iii)] of this paragraph. The distribution percentage for each federation or fund is as follows:

(I) Organization 4 - 25%;

(II) Organization 5 - 25%.

(vi) The fourth step is to determine the undesignated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. The amount must be determined by multiplying the organization's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows:

(I) Organization 1 - \$1,250;

(II) Organization 2 - \$750;

(III) Organization 3 - \$500.

(vii) The fifth and final step is to determine the undesignated initial distribution amount for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The amount must be determined by multiplying the federation or fund's distribution percentage by the amount of undesignated deductions to the Austin

local campaign manager. The amount for each organization is as follows:

- (I) Organization 4 - \$1,250;
- (II) Organization 5 - \$1,250.

~~(H)~~ ~~(E)~~ Notwithstanding anything in this paragraph, a local campaign manager shall distribute deducted amounts to an eligible local charitable organization or a statewide federation or fund according to the percentage method required by subsection (j) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

(2) Receiving deducted amounts through statewide federations or funds.

(A) This subparagraph applies to a state employee only if not employed by an institution of higher education. A state employee's authorization of a deduction to a statewide federation or fund may designate not more than nine ~~three~~ eligible charitable organizations to receive the deducted amounts through the federation or fund.

(B) This subparagraph applies to a state employee only if employed by an institution of higher education. An institution of higher education shall specify the maximum number of eligible charitable organizations that may receive a state employee's deducted amounts through a statewide federation or fund. If employed by that institution, a state employee's authorization of a deduction to a statewide federation or fund may designate not more than that number of eligible charitable organizations to receive the deducted amounts through the federation or fund.

(C) ~~(+)~~ If a state employee's authorization of a deduction to a statewide federation or fund designates only one eligible charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the statewide federation or fund.

(D) ~~(+)~~ If a state employee's authorization of a deduction to a statewide federation or fund designates more than one eligible charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

~~(E)~~ ~~(B)~~ This subparagraph applies if a state employee's authorization of a deduction to a statewide federation or fund does not contain a valid designation. The statewide federation or fund shall determine the undesignated initial distribution amount with respect to the employee for each eligible charitable organization affiliated with the federation or fund. The determination must be accomplished according to the federation or fund's policy.

~~(F)~~ ~~(C)~~ Notwithstanding anything in this paragraph, a statewide federation or fund shall distribute deducted amounts to an eligible charitable organization according to the percentage method required by subsection (k) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

- (d) (No change.)
- (e) Effective dates of authorization forms.

(1) Effective date of authorization forms provided during a state employee charitable campaign. A state employee's authorization form that is provided during a state employee charitable campaign is

effective for the following campaign year if the form is completed properly, the form is signed by the employee, and the employee's employer receives the properly completed and signed form not later than November 15th before the start of that year. The deductions may not start before the beginning of that year.

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

(5) Effective date of authorization forms that request cancellations of deductions.

(A) This paragraph applies only to a state employee's authorization form that requests the cancellation of a deduction.

(B) The employer of the employee may decide when the cancellation will take effect. ~~The~~ ~~However, the~~ cancellation must take effect, however, not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form on July 2, 1994, and that the form requests the cancellation of a deduction. The agency may make the cancellation effective with the August 1, 1994, salary payment. If the agency does not, then the agency must make the cancellation effective with the September 1, 1994, salary payment.

(f) (No change.)

(g) Procedure for federations or funds to apply for statewide participation.

(1) Request for statewide participation. A federation or fund may not be a statewide federation or fund unless the federation or fund applies to the state policy committee for that status in accordance with this section, the Government Code, §659.146, ~~[Texas Civil Statutes, Article 6813h,]~~ and the committee's procedures.

(2) Requirements for the application. The application of a federation or fund to be a statewide federation or fund must include:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of the Government Code, §659.146 ~~[Texas Civil Statutes, Article 6813h];~~

(B)-(F) (No change.)

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

(5) Electronic funds transfers.

~~(A)~~ A federation or fund that has been approved for statewide participation in the state employee charitable campaign shall submit a request to be paid by the comptroller through electronic funds transfers under rules adopted by the comptroller. This subparagraph applies only to the extent that the comptroller's electronic funds transfer system is used.

~~(B)~~ A federation or fund that has been approved for statewide participation in the state employee charitable campaign shall submit a request to be paid by an institution of higher education through electronic funds transfers under rules or procedures adopted by the institution. This subparagraph applies only to the extent that the comptroller's electronic funds transfer system is not used.

(6) (No change.)

(h) Procedure for charitable organizations to apply for local participation.

(1) Request for local participation.

(A) A charitable organization may not be an eligible local charitable organization unless it applies to the appropriate local employee committee for that status in accordance with this section, the Government Code, §659.147,~~[Texas Civil Statutes, Article 6813h]~~, and the committee's procedures.

(B) A federation or fund that wants to be an eligible local charitable organization may apply on behalf of its affiliated agencies.

(2) Requirements for applications from federations or funds. If a charitable organization applying to be an eligible local charitable organization is a federation or fund, then the organization must provide to the appropriate local employee committee:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of the Government Code, §659.147~~[Texas Civil Statutes, Article 6813h]~~;

(B)-(F) (No change.)

(3) (No change.)

(i) (No change.)

(j) Distributions of deductions by local campaign managers.

(1) Requirement to use the percentage method. A local campaign manager shall use the percentage method to distribute deducted amounts to eligible local charitable organizations and statewide federations or funds.

(2) Description of the percentage method.

(A) (No change.)

(B) The contribution percentage for an eligible local charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(C)-(D)~~[(e)(1)(A)]~~ of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(F)(ii)~~[(e)(1)(C)(ii)]~~ of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms completed during the campaign.

(C) The contribution percentage for a statewide federation or fund is the ratio of:

(i) the federation or fund's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(F)(iii)~~[(e)(1)(C)(iii)]~~ of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms completed during the campaign.

(D)-(E) (No change.)

(3)-(5) (No change.)

(k) Distributions of deductions by statewide federations or funds.

(1) Requirement to use the percentage method. A statewide federation or fund shall use the percentage method to distribute deducted amounts to eligible charitable organizations.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a statewide federation or fund shall calculate the contribution percentage for each eligible charitable organization that is an affiliate of the federation or fund.

(B) The contribution percentage for an eligible charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(C)-(D)~~[(e)(2)(A)]~~ of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(E)~~[(e)(2)(B)]~~ of this section; to

(ii) the total amount of deductions authorized to the statewide federation or fund on authorization forms completed during the campaign.

(C) The contribution percentage for an eligible charitable organization may not be recalculated before the conclusion of the next state employee charitable campaign.

(D) The amount of deductions that a statewide federation or fund distributes to an eligible charitable organization is equal to the product of:

(i) the contribution percentage of the organization; and

(ii) the total amount of deductions the federation or fund is distributing.

(3)-(5) (No change.)

(l) Charging administrative fees to cover costs incurred to make deductions. The comptroller has determined that the costs which would be covered by the charging of an administrative fee to charitable organizations would be insignificant. Therefore, the comptroller has decided not to charge the fee. [The comptroller intends to adopt at a later date provisions about charging administrative fees to cover costs incurred by the comptroller and employers in the implementation and administration of Texas Civil Statutes, Article 6813h.]

(m) (No change.)

(n) Responsibilities of the state policy committee.

(1) Statutory responsibilities. The state policy committee shall fulfill its statutory responsibilities as set forth in the Government Code, Chapter 659, Subchapter H~~[Texas Civil Statutes, Article 6813h]~~.

(2) Additional responsibilities. In addition to its statutory responsibilities, the state policy committee:

(A)-(F) (No change.)

(G) shall select to act as the state campaign manager:

(i) a federated community campaign organization ~~[to act as the state campaign manager]~~ in accordance with the criteria

listed[~~contained~~] in paragraph (4) of this subsection, if any federated community campaign organization has applied to be the manager; or

(ii) a charitable organization in accordance with the criteria listed in paragraph (4) of this subsection, if no federated community campaign organization has applied to be the manager;

(H) shall contract with the [~~federated community campaign~~] organization selected as the state campaign manager;

(I)-(S) (No change.)

(3) (No change.)

(4) Criteria for selection of a state campaign manager. The state policy committee shall consider the following criteria when evaluating the application of a federated community campaign organization or a charitable organization to act as the state campaign manager:

(A)-(E) (No change.)

(5) (No change.)

(o) Responsibilities of the state advisory committee. The state advisory committee shall fulfill its statutory responsibilities as set forth in the Government Code, Chapter 659, Subchapter H [Texas Civil Statutes, Article 6813h].

(p) Responsibilities of local employee committees.

(1) Statutory responsibilities. A local employee committee shall fulfill its statutory responsibilities as set forth in the Government Code, Chapter 659, Subchapter H [Texas Civil Statutes, Article 6813h].

(2) Additional responsibilities. In addition to its statutory responsibilities, a local employee committee:

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

(D) shall select to act as the local campaign manager:

(i) a federated community campaign organization [to act as the local campaign manager] in accordance with the [according to] criteria listed [contained] in paragraph (3) of this subsection, if any federated community campaign organization has applied to be the manager; or

(ii) a charitable organization in accordance with the criteria listed in paragraph (3) of this subsection, if no federated community campaign organization has applied to be the manager;

(E) shall contract with the [~~federated community campaign~~] organization selected as the local campaign manager;

(F) shall consult with the local campaign manager before approving the local campaign plan, budget, and materials; and

(G) shall submit to the state policy committee upon contracting with the[a federated community campaign] organization selected as the local campaign manager:

(i) the name of the local campaign area;

(ii) the name of the [federated community campaign] organization with which the local employee committee has contracted; and

(iii) the name, address, and telephone number of the primary contact of the local campaign manager.

(3) Criteria for selection of a local campaign manager. A local employee committee shall consider the following criteria when evaluating the application of a federated community campaign

organization or a charitable organization to act as the local campaign manager:

(A)-(E) (No change.)

(4) (No change.)

(q) Responsibilities of the state campaign manager.

(1) Statutory responsibilities. The state campaign manager shall fulfill the manager's statutory responsibilities as set forth in the Government Code, Chapter 659, Subchapter H [Texas Civil Statutes, Article 6813h].

(2) (No change.)

(3) Statewide campaign reports. A statewide campaign report shall represent a compilation of the local campaign managers' campaign reports. The state campaign manager shall ensure that [submit the statewide campaign report to] the state policy committee, the state advisory committee, and the comptroller receive the statewide campaign report not later than February 5th of the calendar year following the calendar year in which the campaign covered by the report[the 60th day after the day on which the campaign] ended. If February 5th is not a workday, then the first workday after February 5th is the deadline.

(r) Responsibilities of local campaign managers.

(1) Statutory responsibilities. A local campaign manager shall fulfill the manager's statutory responsibilities as set forth in the Government Code, Chapter 659, Subchapter H [Texas Civil Statutes, Article 6813h].

(2) Additional responsibilities. In addition to a local campaign manager's statutory responsibilities, the manager shall:

(A)-(E) (No change.)

(F) submit to the state campaign manager a final campaign report of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager [not later than the 40th day following the close of the state employee charitable campaign];

(G) ensure that the state campaign manager receives the local campaign manager's final campaign report not later than January 15th of the calendar year following the calendar year in which the campaign covered by the report ended or, if January 15th is not a workday, not later than the first workday after January 15th;

(H) [(G)] establish an account at a financial institution for the purpose of receiving payments from the comptroller and institutions of higher education by electronic funds transfer, warrant, or check;

(I) [(H)] distribute interest accrued during a campaign year as soon as possible after December 31st to each eligible local charitable organization and statewide federation or fund in the same manner that undesignated deductions are distributed, subject to the limitation in paragraph (3) of this subsection;

(J) [(I)] submit a request to the comptroller to be paid by the comptroller through electronic funds transfers under rules adopted by the comptroller, but only to the extent those transfers are initiated by the comptroller on behalf of the comptroller or other state agencies;

(K) submit a request to an institution of higher education to be paid by the institution through electronic funds transfers under rules or procedures adopted by the institution, but

only to the extent those transfers are not initiated by the comptroller on behalf of the institution;

(L) [(F)] reconcile the payment report provided by the comptroller or an institution of higher education with the amount of deductions paid to the manager;

(M) [(K)] report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received not later than the 30th day after the day on which the comptroller or the institution mailed or delivered the report;

(N) [(L)] report to each eligible local charitable organization and statewide federation or fund the amount of its undesignated and designated initial distribution amounts as determined under subsection (c)(1) of this section; and

(O) [(M)] report to each eligible local charitable organization and statewide federation or fund its contribution percentage as determined under subsection (j)(2) of this section.

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

(s)-(t) (No change.)

(u) Acceptance of authorization forms by state agencies.

(1) Prohibition against accepting certain authorization forms. A state agency may accept an authorization form only if it complies with the comptroller's requirements.

(2) Reviewing authorization forms. An authorization form submitted by a state employee to a state agency must be reviewed by the agency's campaign coordinator to ensure that the form has been completed properly.

(3) [(2)] Acceptance of altered authorization forms. A state agency is not required to accept an authorization form that contains an obvious alteration without the appropriate state employee's written consent to the alteration.

(v)-(w) (No change.)

(x) Public junior colleges and their employees.

(1) Classification as institutions of higher education and state employees. For the purposes of this section, a public junior college is considered to be an institution of higher education and the college's employees are considered to be state employees unless the college's governing board affirmatively decides for the college not to participate in the state employee charitable contribution program.

(2) Decisions not to participate in the state employee charitable contribution program.

(A) The decision of a public junior college's governing board for the college not to participate in the state employee charitable contribution program is effective for only one fiscal year.

(B) To be valid, the decision of a public junior college's governing board for the college not to participate in the state employee charitable contribution program for a fiscal year must be made not earlier than September 1 and not later than April 1 of the preceding fiscal year.

(C) A public junior college's governing board shall ensure that the state campaign manager receives written notice of the board's decision for the college not to participate in the state employee charitable contribution program. The board's failure to

comply with this requirement does not, however, invalidate that decision.

(3) Charitable deductions outside the state employee charitable contribution program.

(A) This paragraph applies to a public junior college only if the college's governing board has decided for the college not to participate in the state employee charitable contribution program.

(B) The governing board of a public junior college may allow the college's employees to authorize deductions from their salaries or wages for charitable contributions. The deductions must be voluntary.

(C) The deductions must be made in accordance with any policies adopted by the board. Except for this paragraph, this section does not apply to those deductions.

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 16, 1998.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes the repeal of Subchapter OO, §§15.4001-15.4023, concerning legal requirements for Type Program 02; Subchapter PP, §15.4101, concerning needs allowance for Type Program 02; Subchapter QQ, §§15.4201-15.4210, concerning resources for Type Program 02; Subchapter RR, §§15.4301-15.4324, concerning income for Type Program 02; and Subchapter SS, §§15.4401-4409, concerning budgeting for Type Program 02, in Chapter 15, Medicaid Eligibility. The purpose of the repeals is to delete obsolete rules. These rules were the eligibility requirements for individuals who were in nursing facilities prior to January 1, 1974, when the federal government took over the Old Age Assistance program from the states. Because of increases in their incomes over time, these clients are all now eligible for Medicaid under the current special income limit medical assistance only program.

Eric M. Bost, commissioner, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Bost also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that obsolete rules have

been deleted from the rule base. Repeal of the rules will have no economic impact on small or large businesses or providers. There is no anticipated economic cost to persons required to comply with the proposed repeals.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-003, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter OO. Legal Requirements for Type Program 02

40 TAC §§15.4001–15.4023

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

- §15.4001. *Legal Requirements.*
- §15.4002. *Age.*
- §15.4003. *Residence.*
- §15.4004. *Citizenship.*
- §15.4005. *Institutional Residence.*
- §15.4006. *Need.*
- §15.4007. *Transfer of Property.*
- §15.4008. *Establishing Intent.*
- §15.4009. *When Transfer of Property is Not a Barrier to Eligibility.*
- §15.4010. *Degree of Vision.*
- §15.4011. *Re-examination for Degree of Vision.*
- §15.4012. *Not Publicly Soliciting Alms.*
- §15.4013. *Aid to the Permanently and Totally Disabled.*
- §15.4014. *Interpretation of Terms Permanent and Total.*
- §15.4015. *Choice of Physician.*
- §15.4016. *Social Findings.*
- §15.4017. *Action by Review Team.*
- §15.4018. *Request for Additional Information.*
- §15.4019. *Decision and Recommendation.*
- §15.4020. *Follow-up on Decision by Review Team.*
- §15.4021. *Adjustment Period after Alleviation of Disability.*
- §15.4022. *Denial of Assistance.*
- §15.4023. *Conversion Cases Subsequently Determined Ineligible for SSI Benefits.*

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 18, 1998.

TRD-9814819

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 438-3765



Subchapter PP. Needs Allowance for Type Program 02

40 TAC §15.4101

(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 Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.4101. *Personal Needs Allowance.*

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 18, 1998.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



Subchapter QQ. Resources for Type Program 02

40 TAC §§15.4201–15.4210

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.4201. *Capital Resources.*

§15.4202. *Real Property.*

§15.4203. *Homestead.*

§15.4204. *Personal Property.*

§15.4205. *Insurance.*

§15.4206. *Automobile.*

§15.4207. *Trust Accounts in State Institutions.*

§15.4208. *Burial Funds Deposited in Trust Accounts in State Institutions.*

§15.4209. *Resources of Aid to the Blind with a Plan to Achieve Self-Support.*

§15.4210. *Conversion of Property.*

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

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TRD-9814821

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 438-3765



Subchapter RR. Income for Type Program 02

40 TAC §§15.4301-15.4324

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.4301. *Income.*

§15.4302. *General Principles Governing Determination of Income.*

§15.4303. *Earned Income.*

§15.4304. *Employment Income.*

§15.4305. *Small Business Enterprises and Farming Operations (General).*

§15.4306. *Home Enterprises.*

§15.4307. *Income from Roomers and Boarders.*

§15.4308. *Farm Income.*

§15.4309. *Fixed Income.*

§15.4310. *Benefits, Contributions, and Allotments.*

§15.4311. *Retirement, Survivors, and Disability Insurance (RSDI).*

§15.4312. *Veterans' Benefits.*

§15.4313. *Assistance from Other Agencies.*

§15.4314. *Property Income.*

§15.4315. *Home Produced Foods.*

§15.4316. *Earned Income under Title 1 of the Elementary and Secondary Education Amendments of 1966.*

§15.4317. *Income under Manpower Development and Training Amendment of 1966.*

§15.4318. *Excess Value of Food Stamps under Food Stamp Act of 1964.*

§15.4319. *Payments Received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.*

§15.4320. *Loans, Grants, and Scholarships.*

§15.4321. *Standard Work-Related Expense Allowance.*

§15.4322. *Netting Earned Income.*

§15.4323. *General Exclusion.*

§15.4324. *Exclusion to Meet the Needs of the Ineligible Spouse.*

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 18, 1998.

TRD-9814822

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 438-3765



Subchapter SS. Budgeting for Type Program 02

40 TAC §§15.4401-15.4409

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.4401. *Budgeting.*

§15.4402. *Definitions.*

§15.4403. *Individual Budget.*

§15.4404. *Companion Budget (Individual with Ineligible Spouse).*

§15.4405. *Couple Budget.*

§15.4406. *Determining Eligibility and Amount of Applied Income.*

§15.4407. *Budget to Determine Continued Eligibility.*

§15.4408. *Budget to Determine Applied Income.*

§15.4409. *Special Provisions for Rider 49 Recipients.*

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 18, 1998.

TRD-9814823

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: November 1, 1998

For further information, please call: (512) 438-3765



Chapter 79. Legal Services

Subchapter S. Contracting Ethics

The Texas Department of Human Services (DHS) proposes the repeal of §79.1803, concerning presumption against contracts involving former employees, former board members, and their relatives; amendments to §79.1802, concerning definitions; §79.1804, concerning contracts involving current employees; and §79.1805, concerning contracts involving current board members; and new §79.1803, concerning presumption against contracts involving former employees, former board members, and their relatives, in its legal services chapter.

The purpose of the repeal, amendments, and new section is to make the application of the rules to relatives of former DHS employees consistent with the application of the rules to relatives of current DHS employees. The repeal, amendments, and new section also clarify that board members are subject to the rule prohibiting former DHS board members and employees from working on the same "particular matter" for DHS and for a contractor. They also clarify that the terms "current employee" and "former employee" include current and former officers of DHS, such as the commissioner. In addition, the proposal omits the language that prohibits former board members and employees from representing persons before DHS on any matters in which the former board member or employee had substantial involvement or has substantial financial interest, because the provision is unenforceable and beyond the scope of DHS's authority.

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 that the rules will be clearer and easier to understand. The only way these rules affect any businesses is by limiting who they can hire if they want to contract with DHS. On paper, the amendment to §79.1804 increases the number of people businesses are prohibited

from hiring if they want to contract with DHS. However, the amendment will have little actual effect. If it had been in effect for the last two years and nine months, it would not have changed the result of any nongovernmental contractor certification. Furthermore, the amendment will not change anything that businesses that contract with DHS do currently. The paperwork will remain the same. Finally, any economic effect from the amendment on small businesses should be the same as on large businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Peggy Roll at (512) 438-3812 in DHS's Legal Services department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-009, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

40 TAC §§79.1802-79.1805

The amendments and new section are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs.

The amendments and new section implement the Human Resources Code, §§22.001-22.030.

§79.1802. *Definitions.*

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

(1) Current Board member - A person presently a member of the Texas Board of Human Services.

(2) Current employee - A person presently working for [employed by] the Texas Department of Human Services (DHS) as either an employee or an officer other than a Board member.

(3) Former Board member - A former Texas Board of Human Services member whose last date of service was within the immediately preceding two years.

(4) Former employee - A former DHS employee or officer other than a Board member whose last date of service was within the immediately preceding two years.

(5) Organization - An entity (for profit or nonprofit) including, but not limited to, corporations, sole proprietorships, partnerships and unincorporated associations, but excluding any governmental entity.

(6) Relative - A current or former DHS Board member's or current or former employee's spouse, father, mother, brother, sister, son or stepson, daughter or stepdaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

(7) Substantial financial interest - Ownership or control by a former employee (or relative) or a former DHS Board member (or relative) of 10% or more of the contracting firm or its stock or an investment of \$2,500 or more in the organization, whichever is less; or receipt of a 25% or more increase in overall annual benefits, including salary or wages, upon employment by a contractor of a former employee who held one of the positions listed under the definition in this section of "substantial involvement in the development of the contract," as compared to the employee's DHS salary and benefits.

(8) Substantial involvement in the development of the contract - Direct or indirect participation by a former employee [~~or relative~~] or a former DHS Board member [~~or relative~~] in the development of program policy which influenced the type of services provided by the contracting organization. The following positions are assumed to have had such participation: Board member, commissioner, deputy commissioner, associate commissioner, assistant commissioner, regional administrator, assistant regional administrator, regional director, program manager, attorney, business officer (when the contract is of the type handled by the business manager), and (when they are in the same program area) contract manager, program specialist, and contract specialist.

§79.1803. Presumption against Contracts Involving Former Employees, Former Board Members, and Their Relatives.

(a) Particular matter in which former board member or former employee participated.

(1) A former Texas Department of Human Services (DHS) board member who participated in a particular matter during his or her period of board membership, either through personal involvement or because the matter was within his or her official responsibility, may not:

(A) represent any person regarding that particular matter;

(B) receive compensation for services rendered on behalf of any person regarding that particular matter; or

(C) be awarded a contract by DHS relating to that particular matter.

(2) A former DHS employee who was paid a salary equal to or above DHS's salary group A17, step 1, of the position classification salary schedule, and who participated in a particular matter during his or her period of employment, either through personal involvement or because the matter was within the former employee's official responsibility may not:

(A) represent any person regarding that particular matter;

(B) receive compensation for services rendered on behalf of any person regarding that particular matter; or

(C) be awarded a contract by DHS relating to that particular matter.

(3) The DHS commissioner or his designee reviews the circumstances surrounding the proposed representation, compensation, or award of the contract and determines in accordance with applicable state law whether paragraph (1) or (2) of this subsection prohibits the representation, compensation, or award of the contract.

(b) Former board members, former employees, and relatives of former board members and former employees.

(1) DHS may not award a contract to an organization in which any former board member or any former employee is an officer, director, employee, or owner (in whole or in part) if the former board member or former employee:

(A) has a substantial financial interest in the contract;
or

(B) had a substantial involvement in the development of the contract.

(2) DHS may not award a contract to an organization in which a relative of a former DHS board member or of a former DHS

employee is an officer, director, employee, or owner if the relative of the former board member or former employee has a substantial financial interest in the contract.

(3) The commissioner or his designee may waive the rules in paragraph (1) or (2) of this subsection as it applies to the award of a particular contract under the following circumstances.

(A) The commissioner or his designee determines that no reasonable alternative exists but to award a contract to the organization for the needed goods, products, or services. A waiver will normally be granted for contracts of \$5,000 or less, and in instances in which the work for the contractor is on a volunteer basis.

(B) The commissioner or his designee determines that the former employee, former board member, or former employee's or board member's relative actually had no substantial financial interest or substantial involvement in the development of the contract.

§79.1804. Contracts Involving Current Employees.

(a) Except as noted in this section, the Texas Department of Human Services (DHS) does not contract directly with current employees or [5] their relatives [spouses, children, parents, or siblings]. DHS also does not contract with organizations which are owned or controlled in part or whole by these persons.

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

§79.1805. Contracts Involving Current Board Members.

(a) Except as noted in this section, the Texas Department of Human Services (DHS) does not contract directly with current DHS Board members or their relatives, [spouses, children, parents, or siblings,] or with organizations which are owned or controlled, in part or whole, by these persons.

(b) (No change.)

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

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

TRD-9814825

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1999

For further information, please call: (512) 438-3765

◆ ◆ ◆
40 TAC §79.1803

(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 Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.030.

§79.1803. Presumption Against Contracts Involving Former Employees, Former Board Members, and Their Relatives.

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 18, 1998.

TRD-9814824

Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: January 1, 1999
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 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

22 TAC §217.3, §217.12

The Board of Nurse Examiners has withdrawn from consideration for permanent adoption the proposed amendments to §217.3 concerning Temporary Permit and §217.12 concerning Designations for Registered Nurse/Titles Deemed Misleading, which appeared in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6823).

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

TRD-9814900

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Effective date: September 21, 1998

For further information, please call: (512) 305-6811



TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 37. Financial Assurance

Subchapter N. Financial Assurance Requirements for the Texas Risk Reduction Program Rules

(Editor's note: "The Commission intends to revise and repropose the Texas Risk Reduction Program (TRRP) rule. The commission currently envisions reproposing the rule in November or December of this year, and adopting a final rule in Spring 1999. If you have any questions, please contact Clark Talkington, Waste Policy and Regulations Divisions, at (512) 239-6731 or check the TRRP web <http://www.tnrcc.state.tx.us/waste/riskrul3.htm>."

30 TAC §§37.1301, 37.1311, 37.1321

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§37.1301, 37.1311, and 37.1321, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4779).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814606

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Chapter 327. Spill Prevention and Control

Subchapter A. Spill Reporting

30 TAC §327.5

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §327.5, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4782).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814607

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Chapter 331. Underground Injection Control

Subchapter A. General Provisions

30 TAC §331.5

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §331.5, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4784).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814608

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Chapter 332. Composting

Subchapter A. General Information

30 TAC §332.4

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §332.4, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4787).

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TRD-9814609

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter B. Operations Requiring a Notification

30 TAC §332.23

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §332.23, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4788).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814610

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter C. Operations Requiring a Registration

30 TAC §332.37

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §332.37, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4788).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814611

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter D. Operations Requiring a Permit

30 TAC §332.45

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §332.45, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4789).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814612

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Chapter 333. Brownfields Initiatives

Subchapter A. Voluntary Cleanup Program Sections

30 TAC §§333.2, 333.7-333.10

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§333.2, and 333.7-333.10, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4790).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814605

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



30 TAC §333.11

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed repeal to §333.11, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4793).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814604

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Chapter 334. Petroleum Storage Tank Program

Subchapter D. Release Reporting and Corrective Action

30 TAC §334.71

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §334.71, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4793).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814603
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 15, 1998
For further information, please call: (512) 239-6087



Subchapter G. Target Concentration Criteria

30 TAC §334.201

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §334.201, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4795).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814602
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 15, 1998
For further information, please call: (512) 239-6087



Subchapter K. Storage, Treatment, and Reuse Procedure for Petroleum-Substance Contaminated Soil

30 TAC §334.503

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §334.503, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4796).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814600
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 15, 1998
For further information, please call: (512) 239-6087



Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

30 TAC §335.8

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §335.8, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4799).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814598
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 15, 1998
For further information, please call: (512) 239-6087



Subchapter S. Risk Reduction Standards

30 TAC §335.551

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendment to §335.551, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4800).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814599
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 15, 1998
For further information, please call: (512) 239-6087



Chapter 350. Texas Risk Reduction Program

Subchapter A. General Information

30 TAC §§350.1-350.5

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §§350.1-350.5, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4830).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814597
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 15, 1998
For further information, please call: (512) 239-6087



Subchapter B. Affected Property Assessment

30 TAC §§350.31-350.35

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §§350.31-350.35, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4840).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814596

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter C. Development of Protective Concentration Levels

30 TAC §§350.51-350.62

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §§350.51-350.62, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4848).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814595

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter D. Remedy Standards

30 TAC §§350.91-350.96

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §§350.91-350.96, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4866).

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TRD-9814594

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter E. Reports

30 TAC §§350.111-350.117

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §§350.111-350.117, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4879).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814593

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



Subchapter F. Institutional Controls

30 TAC §§350.131, §350.132

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §350.131 and §350.132, which appeared in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4883).

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814592

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: September 15, 1998

For further information, please call: (512) 239-6087



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 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 25. Prepaid Funeral Contracts

Subchapter A. Contract Forms

7 TAC §25.8

The Texas Department of Banking (the department) adopts new §25.8, concerning an exemption from regulation for the sale of certain funeral goods under specified conditions. The section is adopted with changes to the proposed text as published in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6687).

The department administers Texas Finance Code, Chapter 154 (codified by Acts 1997, 75th Legislature, Chapter 1008, §1, from former Texas Civil Statutes, Article 548b), which generally requires sellers of prepaid funeral services or funeral merchandise to be licensed, to deposit sales proceeds in trust pending the death of the benefited party, and to submit to regulatory examination and reporting requirements applicable to the trust.

The department has received numerous inquiries in recent months regarding the growing interest in Texas regarding retail sale and delivery of caskets other than by funeral homes. As this industry generally operates in other states (and would like to operate in Texas), a third party retail outlet, unaffiliated with a funeral provider, offers caskets for sale at discount prices and delivers the merchandise to the purchaser after receipt of the sales price, without restriction regarding the use of the casket. In the usual case, the purchaser is buying the casket for use in a pending or future funeral; however, such use is not a condition of purchase.

Restrictive statutory language has in the past forced the department to take the position that such sales constitute sales of prepaid funeral merchandise. The department has required the unlicensed casket seller to either (1) obtain a license and trust the sales proceeds as required by law, or (2) sell caskets only at need, obtain the name of the deceased from the purchaser at the time of sale, and deliver the purchased casket only to a funeral provider, unless the purchaser submits an affidavit demonstrating extenuating circumstances, such as the purchase of a casket for delivery overseas on an at-need basis. Current statutes are not as restrictive as former Article 548b but at best can be said to be ambiguous.

However, public policy under federal law has actually encouraged the development of the retail casket industry for the stated

purpose of directly benefiting consumers through increased price competition. According to the Federal Trade Commission (FTC), its "Funeral Rule," codified at 15 Code of Federal Regulations, Part 453, is directly responsible for the development of the third party casket sales industry, see 59 Federal Register 1592 (1994) (Rulemaking Regarding Funeral Industry Practices). Testimony before the FTC in its 1994 proceeding indicated that virtually no third-party casket sellers existed before the original enactment of the Funeral Rule in 1984, which effectively allowed the consumer to use a casket from an outside source, and casket retailers therefore owe their existence primarily to the Funeral Rule.

The purpose of state regulation is the protection of funds paid in prepayment of funeral services to be performed in the future, to assure that the funds will be available to pay for the prearranged funeral services at the time the services are needed, see Finance Code, §154.001. The purpose of state regulation is not served by regulating the retail sale and delivery of a casket unconnected with a prearranged or prepaid funeral service, a practice encouraged under federal law. The department has harmonized the state policy of protecting consumers from risk of loss in prepaid funeral services and merchandise with the federal policy of increased price competition by adopting new §25.8, as both policies provide worthy objectives.

Because sale of funeral merchandise by definition is regulated, a new term is defined for "funeral goods" in §25.8(a). To be unregulated, §25.8(b) provides that funeral goods must be actually delivered to the purchaser, and storage options under the control of the seller or another person that receives consideration for the goods or a related prepaid funeral service may not be offered. The funeral goods must be completely unconnected to a prepaid funeral service sold by the seller or an affiliate of the seller. New §25.8(c) provides that, while a sale of funeral goods may be financed, possessory security interests are prohibited. Finally, new §25.8(d) provides that records must be maintained by the seller adequate to support the availability of the exemption. The department has the power and authority to subpoena the records of an unlicensed seller to verify compliance with the exemption, see Finance Code, §35.203.

The commission received one comment letter regarding the proposal from an attorney on behalf of a licensed prepaid funeral seller. The writer notes that the regulated industry has long ago resigned itself to the existence of retail casket sellers and has successfully adapted to accommodate customers who choose to furnish their own caskets and outer vaults. The writer offers several suggestions for improvement.

First, the commenter encourages the department to emphasize in the rule that the conditions of exemption must be met with regard to each and every sale and, in furtherance of this goal, to require that the exemption be claimed annually by an application accompanied by a filing fee. The commenter also believes that the penalties provided by law for failing to meet the conditions of exemption should be stated to give fair notice to exemption claimants. The department concurs that the conditions of exemption must be met with regard to each and every sale and has modified the section as adopted to emphasize that point. The department further agrees that the penalties provided by law for failing to meet the conditions of exemption should be explicitly stated and has therefore added a new sentence in this regard to subsection (d). However, the department declines to adopt an annual process for renewing the exemption or impose filing fees. The purpose of the section is to define a manner of practice that falls outside the scope of the department's jurisdiction under Finance Code, Chapter 154, not to grant an exemption for practices within the department's jurisdiction.

Second, the writer criticizes the phrasing used in §25.8(b)(1) and (4). According to the commenter, §25.8(b)(1) needs to contain the same "72 hours of the time of sale" limitation included in paragraphs (b)(2) and (3). The department disagrees, noting that the term "contemporaneous" as used in paragraph (b)(1) would in fact be more restrictive but for the provisions of paragraphs (b)(2) and (3). The commenter also notes that paragraph (b)(4) may create a loophole allowing the third party shipper of funeral goods to store the goods. The department has modified the paragraph to address this concern as well as concerns noted in the following paragraph.

Finally, the commenter questions the need for paragraphs (b)(4) and (5), noting that they could be difficult to enforce and go beyond the Funeral Rule, which undertakes to advance the "unbundling" of burial container sales from the sale of funeral services and is at least indifferent or even tolerant of cross-marketing opportunities in an interconnected corporate economy. The department disagrees that §25.8(b)(4) and (5) should be deleted. These provisions are not based on or drawn from the Funeral Rule as the commenter appears to assume. In the department's view, these provisions are required by Finance Code, Chapter 154, in order to prevent a subterfuge designed to conceal a connection between the sale of funeral goods and a prepaid funeral service or to allow the seller to retain the goods in storage on behalf of the consumer, a practice that could lead to an abuse of the consumer of the very nature the statute was designed to prevent.

The section is adopted pursuant to rulemaking authority under Finance Code, §154.051, which authorizes the department to prescribe reasonable rules and regulations concerning all matters relating to the enforcement and administration of Chapter 154.

§25.8. *Exemption for Sale of Funeral Goods.*

(a) For purposes of this section, the term "funeral goods" means tangible and nonperishable items of personalty, designed for use in connection with a funeral service, that are sold or offered for sale directly to the public, including an alternative container, casket, or outer burial container, but not including a marker, monument, or tombstone.

(b) A person who sells or offers to sell funeral goods prior to the death of the person for whom the goods are to be used is

considered to be selling or offering to sell funeral merchandise on a preneed basis, and must be licensed under Finance Code, Chapter 154, unless, with respect to each and every offer or sale of funeral goods:

(1) the offer to sell funeral goods contemplates only a contemporaneous exchange of consideration and either delivery of actual physical possession and control of the funeral goods to the purchaser, or shipment of the goods directly to the purchaser;

(2) within 72 hours of the time of sale, the seller delivers actual physical possession and control of the funeral goods or orders a third party to immediately ship the goods directly to the purchaser;

(3) within 72 hours of the time of sale, the purchaser removes the funeral goods from the premises of the seller from whom and where the goods are purchased, or receives confirmation of shipping instructions consistent with paragraph (2) of this subsection;

(4) neither the seller nor another person that receives consideration for the sale of the funeral goods or, within the actual knowledge of the seller, for a prepaid funeral service in which the goods are intended for use directly or indirectly offers to store or stores the goods for the purchaser; and

(5) the goods are not sold in connection with, or in contemplation of trade or barter for, prepaid funeral benefits to be delivered by the seller or an affiliate of the seller.

(c) A seller of funeral goods is not considered to be selling funeral merchandise on a preneed basis solely because the seller takes a promissory note as consideration for the sale and retains a nonpossessory security interest in the funeral goods sold, provided the conditions of subsection (b) of this section are otherwise met.

(d) A seller of funeral goods must maintain written records of each sale adequate to demonstrate compliance with this section. Such records are subject to subpoena by the department pursuant to Finance Code, §35.203. Failure to comply with the conditions for exemption with respect to each and every sale of funeral goods may subject to seller to criminal and civil remedies set forth in Finance Code, §35.201 et seq and §154.401 et seq.

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 15, 1998.

TRD-9814548

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: October 5, 1998

Proposal publication date: June 26, 1998

For further information, please call: (512) 475-1300

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TITLE 13. CULTURAL RESOURCES

**Part IV. Records Management Interagency
Coordinating Council**

Chapter 50. Council Procedures

13 TAC §§50.1, 50.3, 50.5, 50.7, 50.9, 50.11

The Records Management Interagency Coordinating Council (RMICC) adopts new §§50.1, 50.3, 50.5, 50.7, 50.9, and 50.11, concerning the Council's procedures. Section 50.7, concerning Committees, is adopted with a change to the proposed text as published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7317). Sections 50.1, 50.3, 50.5, 50.9, and 50.11 are adopted without change to the proposed text and will not be republished.

To clarify the qualifications for committee membership, RMICC has added a sentence to §50.7(b). The added text reads: "Any state employee may be appointed to serve on a Council committee, subject to approval of the executive director of that employee's agency".

The new sections define the functions of RMICC regarding its purpose, officers, meetings, committees, staff, and rules.

No public comments were received on the proposals.

The sections are adopted under the Texas Government Code, §441.053, which provides RMICC with the authority to adopt rules to improve the state's management of records.

§50.7. Committees.

(a) The RMICC may assign committees to review, evaluate, consider, or analyze any legislation, suggestions, proposals, or other information on the RMICC's behalf. The assigned committees may perform any function deemed necessary by the RMICC. The results of any reviews or evaluations may be made in writing and submitted to the RMICC.

(1) The RMICC may consider the written recommendations, but shall not be bound by such recommendations.

(2) The RMICC may vote to abolish a committee or change a committee's assignment.

(b) All committee chairs shall be nominated and elected by the RMICC. Committee chairs may appoint committee members. Any state employee may be appointed to serve on a Council Committee, subject to approval of the executive director of that employee's agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 28, 1998.

TRD-9815207

Dan Procter

Liaison

Records Management Interagency Coordinating Council

Effective date: October 18, 1998

Proposal publication date: July 17, 1998

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

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter A. General Provisions

19 TAC §5.4

The Texas Higher Education Coordinating Board adopts the repeal of §5.4, concerning Transfer Curricula and Resolution of Transfer Disputes for Lower-Division Courses without changes to the proposed text as published in the August 14, 1998 issue of the *Texas Register* (23 TexReg 8334) and will not be republished.

The repeal of the rule would carry out the provisions of Senate Bill 148 of the 75th Legislature (1997), directing the Coordinating Board to develop a recommended core curriculum of at least 42 semester credit hours, including a statement of the content, component areas, and objectives of the core curriculum. The repeal of the rule offers those guiding principles but does not prescribe specific courses, a responsibility designated in the bill to each individual college and university.

There were no comments received regarding the repealed rules.

The repeal of the rule is adopted under Texas Education Code, §61.822, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Transfer Curricula and Resolution of Transfer Disputes for Lower-Division Courses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814591

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: October 5, 1998

Proposal publication date: August 14, 1998

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

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 71. Applications and Applicants

The Texas Board of Chiropractic Examiners adopts amendments to §§71.1-71.3, 71.5-71.7, 71.10, and 71.11 and the repeal of §71.8 and §71.9, relating to applications and applicants. The amendments to §§71.1-71.3, 71.5, 71.7, 71.11 and the repeal of §71.8 and §71.9 are adopted without changes to the proposed text as published in the July 24, 1998, issue of the *Texas Register* (23 TexReg 7486) and will not be republished. Sections 71.6 and 71.10 are adopted with changes to the proposed text and will be republished. This rulemaking is adopted in conjunction with the board's review of chapter 71 pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. In accordance with §167, the board has reviewed this chapter and has determined that it should be readopted, in part, with amendments to §§71.1-71.3, 71.5-71.7, 71.10 and 71.11. The board finds that the reasons for this chapter, with the proposed changes, continues to exist. The board has determined that §71.8 and §71.9 should be repealed because the reasons for these sections no longer exist.

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

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

Part of subsection (c) and subsection (j) of §71.6 are deleted since the reasons for the provisions no longer exist. Subsection (c) provides that a schedule of each examination be given to examinees. This procedure applied at the time the board gave multiple examinations; it is not necessary currently in connection with the single test currently administered by the board, the jurisprudence examination. Subsection (j) sets out examination requirements during the 1997 transition period and is no longer necessary. Subsection (e) and (g) cover the same subject, the conduct of examinees during an examination. One change to the proposed version combines these two subsections into one, with the deletion of subsection (g) and the re-lettering of the remaining subsections. One other amendment to §71.6 substitutes the term "examinee" for current references to "applicant" or "candidate". For clarity and consistency, "examinee" appears to be the more appropriate term in the context of this section.

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

Other amendments to §71.10, relating to re-taking the jurisprudence examination are adopted. Current subsections (a) and (b) require the reexamination of any board exam to occur within

a year from the prior examination. If it is not, the examinee has to retake all board examinations. This restriction has no place where only a single examination, the jurisprudence test, is given. Therefore, the time restriction provided in §71.10 has been deleted. Subsection (c), allowing applicants to take the jurisprudence examination in their final semester of chiropractic school, is deleted. The Chiropractic Act (Act), §10(g), gives the board the discretion to allow last semester applicants to take the examination. The board has found that administration of the examination and the licensing process for such persons cannot be efficiently or accurately carried out. Difficulties obtaining verification of graduation from these persons frequently occur once the examination had been taken and a license issued. This problem undermines the board procedures as well as the Act and board policy of licensing only qualified individuals. The board is, therefore, allowing examination only after, and upon proof of, graduation. However, the board currently gives the examination several times each year. Thus, the purpose behind subsection (c)—enabling graduates to meet license eligibility as soon as possible after graduation—is continued with multiple examination opportunities each year.

Section 71.11 is changed to delete the scheduling of a requested hearing upon disqualification for examination, if practical, before the scheduled examination. Hearings must be coordinated with the State Office of Administrative Hearings (SOAH) which is responsible for scheduling and presiding over hearings. Under the Administrative Procedure Act (APA), the board and other parties must also comply with certain procedural requirements and deadlines before a hearing is held. In reality, it is not feasible to provide for a hearing prior to the examination to which admission was denied; therefore, this provision has no practical application. With the number of examinations currently provided each year, a disqualified applicant may still take an examination within a relatively short period of time after the initial disqualification and hearing if the disqualification is overturned. Subsection (b) is amended to give notice that such hearings are subject to all the procedural requirements in the APA, which includes the right of the applicant to appear, testify and present evidence, the only procedural requirements in APA currently referenced in this subsection.

No comments were received regarding adoption of the amendments and repeals.

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

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

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

(a) All applicants shall take and pass Parts I, II, III, IV and Physiotherapy of the National Board Examination and the board's Jurisprudence Examination.

(b) The passing score on each part of the National Board Examination is 375. The passing score for the Jurisprudence Examination is 75%.

(c) Regular jurisprudence examinations for licensure shall be given during the calendar year at the discretion of the board. All examinations shall be conducted in the English language. The board shall set the date, time, and place of each examination.

(d) An applicant may not take the Jurisprudence Examination unless the applicant has successfully completed all parts of the National Board Examination which are required by the board.

(e) Examinees shall not be permitted to bring any books, notes, journals, or other help into the examination room, nor to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within hearing of a designated representative of the board; nor shall an examinee leave the examination room except when so permitted by the presiding examiner. Violations of this rule shall subject the offender to expulsion.

(f) A license shall not be issued by the board to any examinee who has been detected in a deceptive or fraudulent act while an examination is in progress.

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

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

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

§71.10. Reexaminations.

An examinee who fails to satisfactorily pass the examination shall be permitted to take a subsequent examination, provided the examinee applies for reexamination and pays a reexamination fee as provided in §75.7 of this title (relating to Fees). An examinee shall be required to make a grade of 75% or better on any subsequent examination.

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 21, 1998.

TRD-9814885

Gary K. Cain, Ed.D.

Executive Director

Texas Board of Chiropractic Examiners

Effective date: October 11, 1998

Proposal publication date: July 24, 1998

For further information, please call: (512) 305-6709



22 TAC §71.8, §71.9

The repeals are proposed under Texas Civil Statutes, Article 4512b, §4(c), §4a, which authorize the board to adopt rules necessary for performance of its duties, the regulation of the

practice of chiropractic, and the enforcement of the Act, and §10, which sets out the board's duties relating to licensing, including subsection (c) which expressly authorizes the board to establish by rule the conditions under which an applicant may be reexamined, and subsection (g) which gives the board the discretion to allow last semester applicants to take the board examination.

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 21, 1998.

TRD-9814886

Gary K. Cain, Ed.D.

Executive Director

Texas Board of Chiropractic Examiners

Effective date: October 11, 1998

Proposal publication date: July 24, 1998

For further information, please call: (512) 305-6709



Part VI. Texas Board of Professional Engineers

Chapter 131. Practice and Procedure

Subchapter B. Application for License

22 TAC §131.54

The Texas Board of Professional Engineers adopts an amendment to §131.54, concerning application for license, without changes to the proposed text as published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7165) and will not be republished.

The section is being amended to clarify that applicants for relicensure must submit an entirely new application.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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 21, 1998.

TRD-9814891

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: October 11, 1998

Proposal publication date: July 10, 1998

For further information, please call: (512) 440-7723



Part XVI. Texas Board of Physical Therapy Examiners

Chapter 321. Definitions

22 TAC §321.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §321.1, concerning Definitions, without changes to the proposed text as published in the July 10, 1998 issue of the *Texas Register* (23 TexReg 7166) and will not be republished.

This amendment is being adopted to eliminate duplication of effort by a physical therapist or physical therapist assistant and a supervised aide.

This amendment allows physical therapy aides to record quantitative data in a patient's permanent record for tasks delegated by the supervising PT or PTA. It also states that any document reflecting the aide's activities must include the name of the aide as well as the supervising PT or PTA.

One written comment was received regarding amendment of this section.

One individual wrote in support of the board's amendment.

The amendment is adopted under the Physical Therapy Practice Act, TCS, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in 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 16, 1998.

TRD-9814681

Alicia D. Essary

OT Coordinator

Texas Board of Physical Therapy Examiners

Effective date: October 6, 1998

Proposal publication date: July 10, 1998

For further information, please call: (512) 305-6900



Chapter 343. Contested Case Procedure

22 TAC §343.3

The Texas Board of Physical Therapy Examiners adopts an amendment to §343.3, concerning Referral Requirement and Exceptions to Referral Requirement, without changes to the proposed text as published in the July 10, 1998 issue of the *Texas Register* (23 TexReg 7168) and will not be republished.

This rule is being amended to correct errors made in a previous filing.

The amendment removes changes previously submitted incorrectly by staff. Staff was unable to withdraw the action prior to the effective date of the adoption.

No comments were received regarding amendment of this section.

The amendment is adopted under the Physical Therapy Practice Act, TCS, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in 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 16, 1998.

TRD-9814680

Alicia D. Essary

OT Coordinator

Texas Board of Physical Therapy Examiners

Effective date: October 6, 1998

Proposal publication date: July 10, 1998

For further information, please call: (512) 305-6900



Chapter 344. Administrative Fines and Penalties

22 TAC §344.1

The Texas Board of Physical Therapy Examiners adopts new §344.1, concerning Administrative Fines and Penalties, without changes to the proposed text as published in the July 10, 1998 issue of the *Texas Register* (23 TexReg 7168) and will not be republished.

This new section is being adopted to increase the enforcement capabilities of the board for the purpose of public protection.

This new section establishes the guidelines the board will use to impose monetary penalties for violations of the rules by licensees and non-exempt physical therapy facilities.

No comments were received regarding adoption of this section.

The new rule is adopted under the Physical Therapy Practice Act, TCS, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in 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 16, 1998.

TRD-9814679

Alicia D. Essary

OT Coordinator

Texas Board of Physical Therapy Examiners

Effective date: October 6, 1998

Proposal publication date: July 10, 1998

For further information, please call: (512) 305-6900



Part XVII. Texas State Board of Plumbing Examiners

Chapter 365. Licensing

22 TAC §365.5

The Texas State Board of Plumbing Examiners adopts an amendment to §365.5, concerning renewals, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8336) and will not be republished.

This section specifies the requirements for renewal of a license or endorsement. The proposed amendment would allow a licensee to take a medical gas continuing education correspondence course, in lieu of a classroom course, to renew a medical gas endorsement. The amendment providing for the correspondence course would apply only to those licensees that reside out of state or in a county that does not contain a city with a population of 100,000 or more.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated Article 6243-101, §5(a) and §8(C) and §12 and §12 (B), (Vernon Supp. 1998).

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 21, 1998.

TRD-9814893

Robert L. Maxwell

Chief of Field Services/Investigations

Texas State Board of Plumbing Examiners

Effective date: October 11, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 458-2145



Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Subchapter E. Other Responsibilities and Practices

22 TAC §501.41

The Texas State Board of Public Accountancy adopts an amendment to §501.41, concerning Discreditable Acts, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8015).

The amendment allows for a clear understanding that the Board expects its Agreed Consent Orders and Board Orders to be complied with and that there will be disciplinary action for non-compliance.

The amendment will function by adding breach of an Agreed Consent Order or a Board Order to the list of discreditable Acts.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be

necessary or advisable to carry in effect the purposes of the law.

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 21, 1998.

TRD-9814910

William Treacy

Executive Director

Texas Board of Public Accountancy

Effective date: October 11, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 305-7848



22 TAC §501.48

The Texas State Board of Public Accountancy adopts an amendment to §501.48, concerning Responses, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8336).

The amendment allows for the Board to process applications more efficiently.

The amendment will function by allowing the Qualifications Division to compel a response from an applicant and, if no response is received, to deny licensure to the Applicant based on the failure to respond.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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 21, 1998.

TRD-9814911

William Treacy

Executive Director

Texas Board of Public Accountancy

Effective date: October 11, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 305-7848



Chapter 511. Certification as a CPA

Subchapter D. CPA Examination

22 TAC §511.73

The Texas State Board of Public Accountancy adopts the repeal of §511.73, concerning IQEX Uniform Examination - Subjects, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8015).

The repeal allows the Board to remove an outdated rule.

The repeal will function by eliminating a rule concerning an examination that the Board no longer gives.

No comments were received regarding adoption of the rule.

The repeal is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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 21, 1998.

TRD-9814914

William Treacy

Executive Director

Texas Board of Public Accountancy

Effective date: October 11, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 305-7848



Subchapter F. Experience Requirements

22 TAC §511.122

The Texas State Board of Public Accountancy adopts an amendment to §511.122 concerning Acceptable Work Experience, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8016).

The amendment allows the Board's rule to use the same term as the Appropriations Act.

The amendment will function by changing the rules' terminology to agree with the terminology used in the Appropriations Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law and the Appropriations 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 21, 1998.

TRD-9814913

William Treacy

Executive Director

Texas Board of Public Accountancy

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Proposal publication date: August 7, 1998

For further information, please call: (512) 305-7848



Chapter 521. Fee Schedule

22 TAC §521.2

The Texas State Board of Public Accountancy adopts an amendment to §521.2, concerning Examination Fees, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8017).

The amendment allows the Board's Rules to be accurate.

The amendment will function by allowing the Qualifications Division to delete reference to an examination that is no longer given.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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 21, 1998.

TRD-9814912

William Treacy

Executive Director

Texas Board of Public Accountancy

Effective date: October 11, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 305-7848



Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Subchapter F. Education, Experience, Educational Programs, Time Periods, and Type of License

22 TAC §535.66

The Texas Real Estate Commission (TREC) adopts an amendment to §535.66, concerning schools accredited by TREC, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8337). The amendment requires accredited schools to ensure that the provisions of a TREC rule concerning the confidentiality of examination materials are read aloud to all students at the beginning of an examination preparation course. Adoption of the amendment is necessary to maintain the confidentiality and effectiveness of TREC's licensing examinations.

No comments were received regarding the proposal.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814618

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Effective date: October 5, 1998

Proposal publication date: August 14, 1998

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



Subchapter I. Licenses

22 TAC §535.92

The Texas Real Estate Commission (TREC) adopts an amendment to §535.92, concerning license renewals for real estate licensees, with changes to the proposed text as published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7169). The amendment permits a real estate licensee to renew a license in active status prior to the completion of mandatory continuing education (MCE) courses. A licensee applying for renewal of an active license without first having completed the MCE courses will be required within 60 days after the license is renewed to pay an additional fee of \$200 and to complete the required courses. The section obligates TREC to notify the licensee of the requirement to pay the fee and complete the MCE courses. Those courses completed after renewal of the license would not, however, satisfy the licensee's MCE obligations for the subsequent license renewal. Failure to complete the courses or pay the fee timely will be grounds for disciplinary action. Adoption of the amendment is necessary to permit licensees to renew their licenses and continue practice while their continuing education requirements are satisfied.

No comments were received regarding the proposal. On final adoption, the proposed text was modified to clarify that licensees who are in an inactive status are not subject to the amendment and that the period of time for satisfying the MCE requirements and paying the additional fee runs from the effective date of the renewed license. The text also was modified to clarify the commission's intent that the additional fee and time for completing MCE requirements would apply to renewals of licenses expiring on or after March 31, 1999. Nonsubstantive changes also were made in voice and tense to make the section easier to read.

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

§ 535.92. *Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.*

(a)-(g) (No change.)

(h) Notwithstanding any provisions of the Act to the contrary, when a licensee in an active status files a timely application to renew a current license expiring on or after March 31, 1999, and has satisfied all requirements other than the completion of applicable MCE requirements, the commission shall renew the current license in an active status and notify the licensee in writing that if the licensee has not completed the required number of hours of MCE courses prior to the expiration date of the current license, the licensee must pay an additional fee of \$200 and complete the required number of hours of MCE courses within 60 days after the effective date of the

new license. For the purpose of this section, a renewed license is effective the day following the expiration of the current license. If the licensee does not complete the required number of hours of MCE courses prior to the expiration date of the current license, the licensee shall complete the required number of hours of MCE courses and pay the additional fee within 60 days after the effective date of the new license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license. Original applications and return to active status are subject to MCE requirements imposed by the Act.

(i)-(k) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 1998.

TRD-9814617

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Effective date: October 5, 1998

Proposal publication date: July 10, 1998

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



Chapter 539. Rules Relating to the Provisions of the Residential Service Act

Subchapter D. Definitions

22 TAC §539.51

The Texas Real Estate Commission (TREC) adopts an amendment to §539.51, concerning the definition of the term "employee", without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (22 TexReg 8338). The amendment replaces the terms "salesman" and "his" with "salesperson" and "the employee's", respectively, to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents. Adoption of the amendment is necessary for TREC to comply with House Bill 814.

No comments were received regarding the proposal.

The amendment is adopted under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to make and enforce rules and regulations necessary to effectuate the intent and provisions of that 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 15, 1998.

TRD-9814619

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Effective date: October 5, 1998

Proposal publication date: August 14, 1998

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter L. General Administration

25 TAC §29.1118

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts the repeal of §29.1118 and new §29.1118 concerning provider re-enrollment or provider contract or agreement modification, without changes to the proposed text as published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7170), and therefore the sections will not be republished.

The new section affects providers of services in the Medicaid program who currently have a signed provider agreement with an agency operating part of the Medicaid program. Section 2.07 of Senate Bill 30, enacted by the 75th Legislature, 1997, requires the Health and Human Services Commission (HHSC) to develop a new provider contract for health care services that contains provisions designed to strengthen the HHSC's ability to prevent provider fraud under the Texas Medicaid program. Senate Bill 30 also requires that, after the development of the new provider contract, the HHSC and each agency operating part of the Texas Medicaid program by rule shall require each provider who enrolled in the program before completion of the new contract to re-enroll in the program under the new contract or modify the provider's existing contract to comply with the requirements of the new contract. This process should enable the HHSC to better prevent provider fraud in the Texas Medicaid program through the new contract provisions. Those agencies that are an operating part of the Texas Medicaid program who re-enroll providers will also be able to gather updated information on the providers in the program which will enhance the ability of the HHSC, in cooperation with agencies operating part of the Medicaid program, to prevent fraud in the program.

No comments were received on the proposal during the comment period.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814834

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: October 8, 1998

Proposal publication date: July 10, 1998

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814835

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: October 8, 1998

Proposal publication date: July 10, 1998

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

◆ ◆ ◆
Chapter 35. Pharmacy Services

Subchapter G. Pharmacy Claims

25 TAC §35.701

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts an amendment to §35.701, concerning the submission of claims to the Vendor Drug Program in an amount consistent with the quantity prescribed and dispensed. Section 35.701 is adopted without changes to the proposed text as published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7171), and therefore the section will not be republished. This amendment clarifies existing rules regarding billing process.

In clarifying its policies concerning billing only for the quantity of drug actually dispensed, the department proposes to prevent abuse in the Texas Vendor Drug Program, by addressing the practice of partially filling prescriptions and billing for the entire amount.

The amendment would require Medicaid providers to dispense the quantity prescribed or ordered by the physician, except as limited by the policies and procedures described in the department's Pharmacy Provider Handbook and to submit claims for the amount actually dispensed where actual quantity dispensed deviates from the physician's prescription.

The following comments were received concerning the proposed section. Following each comment is the department's response to the comment. No changes were made as a result of these comments.

Comment: One commentor expressed concern that the proposal would interfere with the practice common to pharmacies filling prescriptions for long term care facilities, of dispensing

small supplies of medication at a time and aggregating them into one bill at the end of a month.

Response: This rule is not intended to prevent the practice described. Such a practice complies with the intent of the proposal that the department not be billed for more or less than was ordered and dispensed, since the amount billed to the department in the aggregated billing is the amount actually dispensed for that time period. No change was made as a result of this comment.

Comment: One commentor expressed concern concerning the cost to long term care pharmacies, of having to alter their practice of sending a partial order to a long term care facility on the day it was ordered and then completing the delivery when the pharmacy received the rest of the ordered medication to complete the prescription. Alternatively, the pharmacy would have to send two bills to the department instead of one for the single prescription, and incur two costs for transmission of the claim.

Response: The rule does not intend to interfere with a long term care pharmacy's ability to make immediate delivery of needed medication. It only addresses how these medications are billed to the department. In the situation described, the pharmacy need only hold the actual billing to the department until the entire amount of the ordered medication is dispensed, thus incurring only one cost for transmitting the claim. As the previous commentor noted, the practice of delaying billing until the total amount of the prescription ordered is actually delivered is common in the long term care industry. No change was made as a result of this comment.

This amendment is adopted under the Human Resources Code, §32.021 and Texas Government Code Chapter 531, which provides the Health and Human Services Commission with the authority to adopt rules to administer the State's medical assistance program, and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under the Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814832

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: October 8, 1998

Proposal publication date: July 10, 1998

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



Chapter 229. Food and Drug

The Texas Department of Health (department) adopts the repeal of existing §§229.161 - 229.171, §229.173, and §§229.231 - 229.239, and adopts new §§229.161 - 229.171, and §§229.173 - 229.175 concerning food establishments. New §§229.162 - 229.165, 229.168, 129.169, and 229.171 are adopted with changes to the proposed text as published in the May 29, 1998,

issue of the *Texas Register* (23 TexReg 5570). The repeal and new §§229.161, 229.166, 229.167, 229.170, and 229.173 - 229.175 are adopted without changes to the proposed text, and, therefore, the sections will not be republished.

The final rules will repeal the existing rules on food service sanitation and the rules on retail food store sanitation and adopt new food establishment rules. The food establishment rules are a consolidation of the two existing sets of food rules with vending rules, and are consistent with the U.S. Food and Drug Administration (FDA) model Food Code. These new rules are needed to update the existing regulations to reflect the current science and knowledge regarding emerging pathogens and new retail food technologies and will promote the hazard analysis critical control point type of inspection in retail food establishments.

One of the requirements in the proposed rules for foodhandlers handling ready-to-eat foods with bare hands was for the foodhandler to wash their hands twice before handling such foods. Local health departments object to this requirement stating that it is not practical or enforceable. Many industry commenters are also opposed to the requirement. They question the effectiveness and practicality of a double handwash and some recommended the use of hand sanitizers as an alternative for those foodhandlers handling ready-to-eat foods with their bare hands. One commenter, speaking on behalf of the National Council of Chain Restaurants, offered convincing testimony at one of the public hearings for proper handwashing followed by the application of a hand sanitizer. Given the testimony, the department agrees with the suggested changes and has removed the double handwash requirement and offered, among other interventions for bare hand contact with ready-to-eat foods, the use of hand sanitizers following proper handwashing. The department obtained annual costs of hand sanitizers from two national chains which already utilize these type products in their current operational procedures. A list of establishment types was also obtained to calculate the estimated number of facilities which might use the hand sanitizer option for food handlers who handle ready-to-eat foods with their bare hands. Based on these derivations, it is estimated that the fiscal impact for those establishments would be \$2.55 million dollars per year which is an average of \$266 per establishment. Since this cost estimate is based on larger fast food operations with many employees, the estimated impact for smaller food operations would be less than \$266 per year.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of this section:

Change: Concerning §229.162 (94), definitions, the title of the definition, "Temporary food service establishment" was changed to "Temporary food establishment" to be consistent with verbiage in the text.

Change: Concerning §229.164(r), second sentence, the language was changed to read: "The language in the advisory shall be as follows unless otherwise approved by the Retail Foods Division in the department in response to a written request from the food establishment. This new language will be consistent with the Seafood Safety Division Rules and the verbiage in the text relating to food establishments.

Change: Concerning §229.171(h)(2), the comma after "past performance" was deleted for clarification of the paragraph.

Change: Concerning §§229.171(p)(1), (3), (4) and (5) and 229.171(q), the language was changed to insert the correct citation to 25 Texas Administrative Code (TAC).

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning the rules in general, one commenter stated that he supported the rules in their entirety since they were based on the FDA model Food Code and were science based.

Response: The department agrees with the commenter. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter requested that the department consider educational initiatives to make the rules easier to read and understand.

Response: The department agrees and has several initiatives being developed at this time.

Comment: Concerning the rules in general, one commenter asked about a "phase in" period before the enactment of the new rules.

Response: The rules become effective 20 days after the rules are filed with the Office of the Secretary of State, Texas Register Division, which follows Board of Health approval. The department realizes that there are new requirements in the rules and will work with the industry and the regulators in phasing in compliance to the new provisions. The majority of the provisions of the new rules, however, were already contained in the previous rules and should not require a transition period. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter asked when the new rules would be translated into Spanish.

Response: The department will consider translating the rules to Spanish after the English training and phase in period have been accomplished. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter asked when the department's Food Protection Management courses would be updated to be consistent with the new rules.

Response: The department is already working on a revision of the question bank and Instructor's Training Guide so that they are synchronized with the new rules, when they are adopted. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter suggested that one-half inch colored tags identifying each section of these rules be printed on the margins of each page to assist users in locating sections more quickly and efficiently.

Response: The department will provide a copy of these rules upon request and will also make them available to download from the Internet. The department encourages users of these rules to make any modifications they deem necessary that will assist them in locating sections more quickly and efficiently. The department is also working on several ways to make the rules easier to use. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter was against the rules in their entirety and stated that they should be rewritten because they were incomprehensible in their current form.

Response: The department disagrees with the request to rewrite the rules but agrees that the proposed rules are more technical and science based than the rules they replaced. The proposed rules are substantially equivalent to the FDA model Food Code. The department is currently developing training courses to be provided to the local health agencies as well as the industry to help implementation during the transition stage. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter suggested that the department conduct a fiscal analysis and disclosure of the economic impact of these rules.

Response: A fiscal analysis and comments on the economic impact of the rules are provided in the Preamble of these rules. There will be a fiscal impact due to one of the changes which was made pursuant to the request made by the commenters. It should be noted that the major change in the new adopted rules which will have some possible long range economic impact is proposed to not take effect until five years after approval of these rules. Specifically, this is the requirement for refrigeration equipment to meet the cold hold temperature of 41 degrees Fahrenheit (F). This phase in period is consistent with the FDA model Food Code and the national Conference for Food Protection. Although the new adopted rules are more detailed than the previous rules, most of the requirements in the new adopted rules are an extension of, or provide specific explanation of, the previous rules. The new adopted rules have some new provisions which will actually represent a cost savings to the industry. One such provision is the allowance for food to be out of refrigeration for up to four hours as long as certain tracking procedures are followed. In addition, food that is maintained at 41 degrees F has three additional days of shelf life which should be considered a cost savings. It should also be noted most food establishments already have many of the new requirements in place, such as date marking. It is believed that the cost of new provisions will be offset by the cost saving provisions in the proposed rules. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter asked what types of outreach and public health promotion the department intends to undertake to initiate the changes in the proposed rules.

Response: The department is developing several training classes and training materials designed for regulators and industry on the implementation of the new rules. These will be ready after final adoption of the rules. In addition, a pocket guide is being developed to facilitate understanding of the new rules. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter suggested that at least one additional public hearing be scheduled to allow for full participation by all interested parties.

Response: The department disagrees with the request. The department conducted four announced public hearings around the state. Hearings were held in Dallas, Odessa, Houston, and Austin. Additionally, the proposed rules were published in the *Texas Register* on May 29, 1998, which began the official 30 day comment period. The department also sent out a draft of the proposed rules in November 1997 to regulated industry and regulatory authorities for review and comment before the proposed rules were presented to the Board of Health. No change was made as a result of comment.

Comment: Concerning the rules in general, one commenter stated that there will be significant training involved in the implementation of the new rules.

Response: The department agrees that there are new requirements in the rules and will work with the industry and the regulators to phase in compliance with the new provisions. No change was made as a result of comment.

Comment: Concerning §229.162(33), the definition of "food establishment," one commenter suggested language which would include produce stands under this definition.

Response: The department disagrees because produce stands selling only raw, unprocessed fruits and vegetables are regulated by the Texas Department of Agriculture. No change was made as a result of comment.

Comment: Concerning §229.162(33), the definition of "food establishment," one commenter suggested adding a new definition of "grocery store" in order to clarify the examples given under subparagraph (A) in the definition.

Response: The department disagrees since the types of operations listed in subparagraph (A) under this definition are only examples of "food establishments" as defined in the new rules. In addition, the examples utilize the language cited in the Health and Safety Code, Chapter 437, and are included to be consistent with the statute. No change was made as a result of comment.

Comment: Concerning §229.162(44), the definition of "imminent health hazard," two commenters suggested changing the word "and" in the third line to "or" so as to be consistent with the FDA model Food Code.

Response: The department agrees and has made the suggested change.

Comment: Concerning §229.162(71), the definition of "pushcart," one commenter suggested that pushcarts fall under the definition of equipment and stated that their operation uses pushcarts for display but do not want these to require additional permitting within a permitted establishment.

Response: The department disagrees since the definition of "pushcart" in the proposed rules clearly states such units be limited to SERVING nonpotentially and certain potentially hazardous foods as authorized by the regulatory authority. It is not the intent of the rules to require permitting of pushcarts used for display. In addition, for the facilities permitted under the Health and Safety Code, Chapter 437, this statute prohibits multiple permitting of the same facility. A pushcart would be considered a part of the retail food store and hence would be included under the permit of that facility. No change was made as a result of comment.

Comment: Concerning §229.163(a), two commenters suggested new language after the last sentence of the subsection and stated that 24-hour operations do not need to have the person-in-charge in late shifts demonstrate the requested knowledge required by this subsection.

Response: The department disagrees since the person in charge of a retail food operation, regardless of the hours of operation or shift, should be knowledgeable in pertinent areas of the operation at that time. It is not the intent of this subsection to assure that all shift managers be knowledgeable of all rules, but, as stated in the subsection, only to the areas

"as they relate to the specific food operation." Also, this is only one of three options which can be utilized to demonstrate the required knowledge to the regulatory authority at the time of the inspection. No change was made as a result of comment.

Comment: Concerning §229.163(a), one commenter suggested changing the requirement for having a designated person in charge during all food processing and preparation.

Response: The department disagrees with the commenter because the health of consumers and the employees must be protected during times food is offered to the public. Eliminating the requirement to have a person in charge when processing and preparation is not taking place would not provide the establishment the level of oversight necessary to respond to conditions, which if left uncontrolled, may lead to food safety hazards. The commenter maintains that a person in charge is not necessary in a supermarket when there is no processing and preparation taking place. The department maintains that food safety issues may arise even during the storage and handling of prepackaged foods and that a trained person be available to address these issues. No change was made as a result of comment.

Comment: Concerning §229.163(b), three commenters stated that Hazard Analysis Critical Control Point (HACCP) is not a requirement for food establishments under the new rules and therefore the requirement under this subsection to demonstrate knowledge in this area is unwarranted.

Response: The department disagrees because §229.163(b) only requires the demonstration of knowledge of the principles of HACCP, not the specific details of HACCP plans required under the variance provision. This language is also consistent with the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.163(b), two commenters requested that a certified food protection manager need not be present during all hours of operation.

Response: The department is in agreement with the commenters. The new rules do not require a certified manager on site. Having a certified food protection manager present during operations is only one of several options for the person in charge to demonstrate knowledge to the regulatory authority. No change was made as a result of comment.

Comment: Concerning §229.163(b)(11), one commenter suggested deleting this paragraph requiring the person in charge to be able to identify the source of water used and measures taken to ensure its potability.

Response: The department disagrees because the person in charge must know the source of the water used in the establishment, i.e., whether it be from a community water supply or a well. Certain measures are required to ensure water quality if the water is from a well. In addition, the person in charge needs to know the system is functioning properly. Also, the person in charge must understand how to protect the water from contamination during the course of establishment operations. No change was made as a result of comment.

Comment: Concerning §229.163(b)(15), one commenter suggested that the paragraph be deleted because "rights and authorities" refers to legal requirements and interpretation of the rules.

Response: The department disagrees with the commenter because the person in charge must be able to understand the responsibilities, rights and authorities of the food employee, the person in charge, and the regulatory authority in order to maintain food operations that provide safe food to consumers. The department disagrees that this paragraph requires interpretations of these rules and maintains that the person in charge be aware of the legal obligations of a food establishment. This language is consistent with that of the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.163 and (d)(1), three commenters suggested deleting the language regarding food employee applicants because of possible violations of the Americans with Disabilities Act (ADA) requiring nondiscriminating hiring practices.

Response: The department agrees that federal statutes must not be violated, and has amended the language in the new rules for consistency with the ADA. The person in charge may only request information from an applicant if the applicant has been conditionally offered employment. This is necessary to determine if the potential food employee has an existing or pre-existing condition for which they should be restricted or excluded from the food establishment. This will help prevent food employees from working in food establishments who may cause a foodborne illness because they are or were infected with a pathogen. No change was made as a result of comment.

Comment: Concerning §229.163(d)(1), one commenter recommended that the paragraph be deleted from these rules in its entirety because it places considerable burden and liability on the person in charge of a food establishment and also to health inspectors.

Response: The department disagrees with the commenter because proper management of a food establishment operation begins with employing healthy people and instituting a system of identifying employees who present a risk of transmitting foodborne pathogens to food or to other employees. Information concerning the health status of food employees and applicants to whom a conditional offer of employment is made, as allowed under the Americans with Disabilities Act of 1990, must be disclosed to the person in charge. No change was made as a result of comment.

Comment: Concerning §229.163(d)(1)(B)(i)(I), one commenter suggested that a definition for "diarrhea" be added to clarify the subclause so that untrained retail food operators would be better able to make this determination.

Response: The department disagrees in that "diarrhea" is a commonly understood term and the proposed language is consistent with that in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.163(d)(1)(C), five commenters suggested that the requirement in the proposed rules to report past illness to management have a specified time limitation.

Response: The department agrees that a specified time frame would clarify and serve a useful purpose and has made the change to this subparagraph.

Comment: Concerning §229.163(d)(1)(D)(i), one commenter suggested that a Public Health Officer be referenced as the person who suspects the food employee or applicant of causing or being exposed to a confirmed foodborne illness outbreak.

Response: The department disagrees, but offers the following clarification to the commenter. The language of the clause refers to the responsibilities of the person in charge at the food establishment. It is the responsibility of the employees to disclose the pertinent information to the person in charge so that the person in charge can use the information to take action which might prevent a foodborne illness or outbreak. No change was made as a result of comment.

Comment: Concerning §229.163(d)(1)(D)(iii), one commenter suggested deleting this clause because of the extended family configurations today which may unwittingly place food establishments in violation of these rules.

Response: The department disagrees with the commenter. This clause is essential in that the person in charge needs to be aware of household members who may have been exposed to one of the specific diseases referenced. This requirement can help prevent secondary illnesses or outbreaks from occurring. No change was made as a result of comment.

Comment: Concerning §229.163(d)(1)(D)(iv), four commenters suggested deletion of the entire clause, stating that the typical retail food employee does not have access to the "Health Information for International Travel" publication and therefore the section would be impractical from an industry as well as the regulatory perspective.

Response: The department agrees and has deleted the clause. This is also consistent with actions taken by the national Conference for Food Protection.

Comment: Concerning §229.163(d)(2)(B)(i), one commenter suggested a definition for diarrhea is needed to assist retail food workers in making this evaluation.

Response: The department disagrees in that "diarrhea" is a commonly understood term and the proposed language is consistent with that in the FDA model Food Code.

Comment: Concerning §229.163(d)(2)(B)(ii), one commenter suggested deleting this clause because the provision is included in §229.163(d)(2)(A).

Response: The department disagrees because §229.163(d)(2)(B)(ii) addresses exclusion of a food employee diagnosed with an infectious agent as specified and the clause is specific for a carrier, i.e., someone that is asymptomatic but is infected. The clause is not redundant. No change was made as a result of comment.

Comment: Concerning §229.163(d)(4), one commenter suggests deleting any reference to "applicants" in order to be compliant with the requirements of the ADA.

Response: The department agrees and has made the changes in the rules requested by the commenter.

Comment: Concerning §229.163(e)(4)(A), (C), (D), (E), and (I), one commenter suggested deleting these subparagraphs because they are not necessary to list if the subparagraphs (B), (F), (G), and (H) are followed.

Response: The department disagrees with the commenter. Specific activities necessitate handwashing in food establishments. These are enumerated in subparagraphs (A)-(I). No change was made as a result of comment.

Comment: Concerning §229.163(e)(2), one commenter stated that they opposed the double handwash requirement and

mandatory glove use but instead suggested a single handwash using an antibacterial soap.

Response: The department agrees and has made the necessary changes to reflect this comment in the proposed rules. Single use gloves, hand sanitizers, antimicrobial soaps, and other options are now available as barriers when foodhandlers handle ready-to-eat foods with their bare hands.

Comment: Concerning §229.163(e)(2), one commenter considered the requirement for cleaning fingernails and between the fingers unclear and offered clarifying language.

Response: The department agrees and has made the suggested change.

Comment: Concerning §229.163(e)(2) and §229.163(e)(5), two commenters requested that the department consider adding language allowing the use of automated handwash systems in lieu of manual handwash procedures, if approved by the regulatory authority.

Response: The department agrees and has added the requested language to the appropriate sections of the proposed rules.

Comment: Concerning §229.163(e)(2), one commenter recommended deleting a standard time required to perform a thorough handwash.

Response: The department disagrees with the commenter because it takes more than just the use of soap and running water to remove the transient pathogens that may be present. It is the abrasive action obtained by vigorously rubbing the surfaces being cleaned that loosens the dirt or soil present. The time standard for a thorough handwash mirrors the standard found in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.163(e)(2) and (4), one commenter suggests deleting any reference to the washing of exposed portions of the arms and requiring the washing of hands and wrists only.

Response: The department disagrees that washing exposed portions of the arms is impractical and unnecessary. Exposed arms are subject to contamination at any time and may subsequently contaminate food. No change was made as a result of comment.

Comment: Concerning §229.163(e)(3), two commenters favor not mandating glove use when handling ready-to-eat foods and support the double handwash requirement as an alternative. One of these commenters also suggested that the department consider any alternate procedures for handwashing endorsed by the FDA which achieve similar levels of safety.

Response: The department agrees in part by not mandating glove use and allowing other options such as the use of utensils; however, the double handwash requirement has been deleted per other commenters.

Comment: Concerning §229.163(e)(3), 17 commenters objected to the requirement for the use of single-use gloves when handling ready-to-eat foods.

Response: The department disagrees because there is no requirement in this paragraph or elsewhere in the proposed rules for foodhandlers to use gloves when handling ready-to-eat foods. This has been widely misunderstood and was clarified

at each of the public hearings. Senate Bill 1831, passed by the 75th Legislature, allows foodhandlers a handwashing option at specific times when handling ready-to-eat foods. The rules are consistent with this statute and also allow other options such as deli tissue, spatulas, tongs, or other suitable utensils. No change was made as a result of comment.

Comment: Concerning §229.163(e)(3), 34 commenters objected to the requirement for a double handwash for foodhandlers who contact ready-to-eat foods with their bare hands. Many reasons were given for the objection including cost, questionable efficacy for the time and effort expended, practicality, safety considerations, and enforceability. Many industry commenters stated that good handwashing practices were already in place. Regulatory commenters who objected to the double handwash requirement stated that food employees did not routinely wash their hands as required but that a double handwash provision would not be enforceable. Other commenters suggested removal of the double handwash provision, but support a requirement for other verifiable physical barriers. Several of the commenters suggested that a reasonable option to the double handwash requirement would be a handwash followed by the use of a hand sanitizer.

Response: Although the importance of handwashing in retail food establishments is widely acknowledged, in reality, improper or lack of handwashing is very often the case. A survey of ten retail food store chains conducted by the department's Manufactured Foods Division in 1997 disclosed that in 184 inspections, improper handwashing was marked as a violation 59 times (32%). Transmission of pathogenic bacteria and viruses from foodhandlers to consumers causing foodborne illnesses is well documented in the literature. The department feels that if foodhandlers choose the option of contacting food with their bare hands, an additional barrier besides handwashing must be in place to protect the consumer from foodborne illness. In lieu of a double handwash requirement, the department has amended this paragraph, removing the double handwash requirement but requiring that foodhandlers who contact ready-to-eat foods with their bare hands have as an option, in addition to the options offered in §229.164(e)(1)(B), the use of a hand sanitizer as referenced in §229.163(e)(6) of the rules. Section 229.163(e)(3) has been amended to reflect this change.

Comment: Concerning §229.163(e)(3), two commenters support the use of utensils or gloves when handling ready-to-eat foods.

Response: The department agrees and has retained language allowing the option of single-use gloves when handling ready-to-eat foods. No change was made as a result of comment.

Comment: Concerning §229.163(e)(3), one commenter suggested that the provisions for using single-use utensils and gloves when handling ready-to-eat foods be deleted because it would not ensure safer food handling and would be too costly.

Response: The department disagrees with the commenter because the use of suitable utensils or gloves, when properly used, provide an effective barrier between the employee's hands and the ready-to-eat foods. Hands are frequently vehicles in the transmission of foodborne pathogens and measures taken to reduce bare-hand contact will minimize the spread of pathogenic organisms. No change was made as a result of comment.

Comment: Concerning §229.163(e)(6)(A), one commenter suggested clarification of the language regarding the distinction between a hand sanitizer and a chemical hand sanitizing solution used as a hand dip.

Response: The department agrees with the commenter. The commenter may have been referring to a previous draft of the proposed rules. The clarification has already been made and is reflected in these rules. No change was made as a result of comment.

Comment: Concerning §229.163(e)(6)(A)(i)(II), one commenter suggested that the use of the USDA List of Proprietary Substances and Nonfood Compounds publication not be used as a standard to determine chemical hand sanitizer solutions or hand sanitizers.

Response: The department disagrees with the commenter. This subclause mirrors the text of the U.S. FDA Model Food Code 1997 in utilizing this publication as the standard. No change was made as a result of comment.

Comment: Concerning §229.163(f), three commenters recommended specific guidance for the requirement for "trimmed, filed and maintained" fingernails. One of the three commenters provided suggested language.

Response: The department disagrees that a change is needed. The department requires fingernails to be trimmed, filed and maintained so the edges and surfaces are cleanable and not rough. Furthermore, Section 229.163(e)(2) requires that employees keep the areas underneath the fingernails clean. The length of the fingernail is not a food safety issue if properly maintained and cleaned, therefore, the department does not require a standard measurement. For these reasons, the FDA model Food Code also does not specify a length for fingernails of employees. No change was made as a result of comment.

Comment: Concerning §229.163(j)(2), one commenter requested an exemption from the hair restraint requirement for food employees working with raw, unprocessed fresh fruits and vegetables.

Response: The department disagrees because in most operations, food employees are multi-tasked and are likely to prepare or process fresh fruits and vegetables as well as perform other tasks such as culling or stocking. No change was made as a result of comment.

Comment: Concerning §229.164(b)(5), one commenter agreed with the clause as written regarding molluscan shellfish.

Response: The department agrees with the commenter and will retain the language.

Comment: Concerning §229.164(b)(6)(A) and (B), one commenter recommended that these subparagraphs regarding inspection of wild mushrooms be deleted as recommended by the national Conference for Food Protection.

Response: The department agrees and has deleted the paragraph for consistency with the national Conference for Food Protection.

Comment: Concerning §229.164(c), one commenter stated the rules should address the transportation of foods to retail food establishments and that trucks should be monitored for food temperatures.

Response: The department agrees and points out that transportation vehicles are included in the definition of food establishment as contained in the proposed rules. Also, §229.164(c) requires that food be received by a food establishment at specified temperatures which should be monitored by the regulatory authority. No change was necessary as a result of comment.

Comment: Concerning §229.164(c)(8) and §229.164(c)(9)(A)(vi), one commenter agreed with the paragraph and clause as written regarding shucked shellfish, packaging and identification.

Response: The department agrees with the commenter and will retain the language. No change was made as a result of comment.

Comment: Concerning §229.164(d)(1)(B)(i) and (d)(1)(C)(i), one commenter requested clarification between these clauses in subparagraph (2)(B) of this subsection.

Response: The referenced clauses require the source of the shellstock and shellfish be on display, and does not prohibit removal from the original container. Section 229.164(d)(2)(B) does not prohibit the shellstock from being removed from the original container but does mandate that the tag remain attached to the original container until the container is empty. No change in the rules is necessary.

Comment: Concerning §229.164(d)(2)(A), two commenters requested specification of a shellfish tag identification system so that retailers will know what is acceptable.

Response: The department disagrees to specifying one specific methodology since there are numerous systems which could be developed to satisfy this requirement. Each system will be assessed on a case-by-case basis and approval will be based on their effectiveness in product traceback. No change was made as a result of comment.

Comment: Concerning §229.164(d)(2)(A), one commenter requested clarification regarding the process for the regulatory authority to approve a record keeping system to maintain shellstock identification.

Response: The department agrees that the subparagraph needs clarification on the approved process for record keeping systems and has amended the subparagraph for clarification.

Comment: Concerning §229.164(e)(1)(A), (B) and (C), one commenter recommended that requirements for bare hand contact of ready-to-eat foods be changed from "shall" to "should" and states that prudent operators would attempt to comply due to the importance of handwashing.

Response: The department disagrees with the commenter. It is the intention of these subparagraphs that the foodhandlers not contact ready-to-eat food with bare hands or that suitable interventions be in place if bare-hand contact occurs. Several optional interventions are allowed as specified in this subparagraph and in §229.163(e)(3). The language in §229.164(e)(1)(B) is also consistent with that in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.164(e)(1)(B), one commenter suggested adding the phrase "a smooth, durable and nonabsorbent glove" before "or single use gloves" to address rubber washable gloves which might be used for hot items such as chickens on a rotisserie.

Response: The department disagrees with the commenter, however, it should be noted that a provision for the use of a smooth, durable, nonabsorbent glove is provided in §229.164(h)(5)(C). No change is necessary for this subparagraph.

Comment: Concerning §229.164(e)(1)(B), one commenter suggested the language used does not provide for alternatives to bare hand contact.

Response: The department disagrees with the commenter in that the subparagraph provides alternatives to bare hand contact such as using suitable utensils, deli tissue, spatulas, tongs, single-use gloves, or a handwash procedure as prescribed in §229.163(e)(3). No change was made as a result of comment.

Comment: Concerning §229.164(e)(1)(B), one commenter supports requirements to reduce possibilities for bare hand contamination of ready-to-eat foods.

Response: The department agrees with the commenter and has already included food handling and personal hygiene standards in this subparagraph. The subparagraph also describes specific practices which will reduce possibilities for bare hand contamination of ready-to-eat food. No change was necessary as a result of comment.

Comment: Concerning §229.164(e)(1)(B), one commenter suggested employees be required to wear gloves when handling ready-to-eat foods.

Response: The department disagrees with the commenter. Gloves are not required, but are one of the several options in this subparagraph which may be used as an intervention when foodhandlers contact food with their hands. No change was made as a result of comment.

Comment: Concerning §229.164(e)(1)(B), one commenter suggested that a prohibition of bare hand contact is very difficult to enforce.

Response: The department agrees; and to be consistent with state statutes, does not prohibit bare hand contact of ready-to-eat foods. However, adequate provisions are contained in the rules to minimize contamination of ready-to-eat foods with bare hands. No change was made as a result of comment.

Comment: Concerning §229.164(e)(1)(B), one commenter stated that they favored this subparagraph which requires foodhandlers to avoid bare hand contact with ready-to-eat foods by the use of tongs, utensils, single-use gloves, or other effective means.

Response: The department agrees and will retain this provision in the rules. No change was made as a result of comment.

Comment: Concerning §229.164(e)(1)(B), one commenter stated that FDA's position is to have no bare hand contact of ready-to-eat foods and that the use of gloves was only one option in complying with this provision of the rules.

Response: The department agrees with this comment and will retain existing language with regard to the use of single-use gloves as an option to preclude bare hand contact of ready-to-eat foods. No change was made as a result of comment.

Comment: Concerning §229.164(f)(2)(A)(ii), one commenter suggested that cleaning and sanitizing equipment between species or processing species in the order of beef, pork, and poultry be added to this section.

Response: The department disagrees with the commenter. Frequency of cleaning of equipment and utensils is covered in §229.165(n)(1). The department agrees with the commenter regarding the cleaning of equipment and food contact surfaces between species, which is found in §229.165(n)(1)(A)(i). Section 229.165(n)(1)(B) allows species to be processed in the order from the lowest cook temperature to the highest cook temperature so that cleaning of equipment is not necessary between species. This method ensures that any cross contamination between species results in an adequate log reduction in pathogens of concern. No change was made as a result of comment.

Comment: Concerning §229.164(f)(3), one commenter suggested it is unnecessary to label food storage containers with the common name of the food. The commenter stated that the preparation date and expiration date should be sufficient to maintain proper rotation.

Response: The department disagrees with the commenter. The labeling of working containers holding foods or food ingredients that are removed from their original packages is required except for containers holding food that can be readily and unmistakably recognized. There are food safety issues regarding the use of foods or ingredients that may be used inadvertently; i.e., salt, sugar, and monosodium glutamate could not be distinguished by appearance. No change was made as a result of comment.

Comment: Concerning §229.164(h)(2), one commenter suggested adding a subparagraph to the paragraph regarding storage of utensils in hot water, as recommended by the national Conference of Food Protection.

Response: The department agrees with the commenter and added §229.164(h)(2)(F) in accordance with the recommendation of the national Conference for Food Protection.

Comment: Concerning §229.164(h)(3)(C), one commenter suggested deleting the provision for storage of wiping cloths used for raw animal foods in a separate sanitizing solution from wiping cloths used for other purposes.

Response: The department disagrees with the commenter because raw animal products may contain pathogenic organisms. Separation of wiping clothes is necessary to prevent cross contamination between raw animal foods and other areas of the establishment. No change was made as a result of comment.

Comment: Concerning §229.164(h)(6)(A), one commenter suggested adding an exception to this section that would allow food employees to provide second portions or refills to consumer's drinking containers, as recommended by the national Conference for Food Protection.

Response: The department agrees with the commenter and made the change in accordance with the recommendation of the national Conference for Food Protection.

Comment: Concerning §229.164(i)(2)(F) and (G), one commenter requested explanation of the requirement to shield overhead sewer lines and overhead leaking water lines in food storage areas.

Response: The department offers the following explanation to the commenter. The purpose of this section is to assure that food stored beneath sewer and water lines are adequately protected from contamination should leakage occur. The requirements are clear as stated in the rules and compliance with these subparagraphs will accomplish the intended purpose.

The language is also consistent with the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.164(j)(3)(B), one commenter suggested that individually wrapped foods not be subject to the food protection requirements in this subparagraph.

Response: The department disagrees with the commenter on eliminating the requirement for providing suitable utensils to handle wrapped foods for consumer self service. Wrapping, unlike packaging, is not intended to protect the food from excessive manual contact and handling. Wrapping would not provide an adequate and effective barrier to consumer self-service operations. No change was made as a result of comment.

Comment: Concerning §229.164(j)(3)(G), two commenters recommended deletion of this subparagraph, citing that they felt it was unnecessary and that the requirements for consumer self-service operations were contained in other parts of the rules.

Response: The department disagrees because the proposed language implements Texas Health and Safety Code, Chapter 438, Subchapter A, enacted by the 68th Legislature. Although some of the requirements may be referenced in other sections of the rules, this particular subsection addresses bulk foods specifically and should be inclusive of all requirements related to implementation of the statute. No change was made as a result of comment.

Comment: Concerning §229.164(k), two commenters suggested that the variable time/temperature relationships be simplified.

Response: The department disagrees with the commenters. The rules must specify more than one time/cook temperature requirement to accommodate different food preparation techniques and operations. These rules also allow for variances to be requested when the variance request shows that no health risk will result. The current time-temperature relationships are consistent with those in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.164(k)(1)(C), one commenter supports efforts to educate consumers regarding the inherent risks associated with consumption of undercooked potentially hazardous foods.

Response: The department agrees with the commenter and is working to develop educational material on this subject. No change was made as a result of comment.

Comment: Concerning §229.164(k)(1)(C), one commenter suggested that establishments not serving raw or undercooked animal food be exempt from the subparagraph's requirement regarding consumer notification of the risks involved in eating animal food that is raw or undercooked.

Response: The department agrees with the commenter because establishments not serving raw or undercooked animal food need not inform consumers of those risks with consuming such foods since they are not offered by the establishment. No change was made as a result of comment.

Comment: Concerning §229.164(k)(1)(C), one commenter agreed with the subparagraph regarding consumers being advised of ordering raw or undercooked animal food.

Response: The department agrees in part but has amended the language to recommend that consumers be notified when ordering raw or uncooked ready-to-eat foods.

Comment: Concerning §229.164(k)(1)(C), fifteen commenters disagreed with the requirement that a retail food establishment notify customers at the time of order if the food they order does not meet the temperature cooking requirements as specified in the proposed rules. Most cited that their customers have a preference as to the way they want a specific food cooked, such as an over-easy egg or a tuna steak cooked medium. In addition, the commenters stated that food operators, especially wait staff, do not have the medical expertise or knowledge in most cases, to deliver health information on the potential hazards of food when specified by the customer.

Response: The department agrees in part with the commenters and has changed the word "shall" to "should" in the subparagraph except for highly susceptible population groups as defined in the proposed rules. This issue has been debated nationally and the FDA has done focus group studies on the effectiveness of consumer advisories, including when the food is special ordered by the consumer. These focus group studies were inconclusive and the effect of consumer advisories was questionable. The department will reconsider the issue in future rule amendments pending the continuation of the FDA studies. FDA is also working with the industry and the states to address this issue through an educational campaign including development and dissemination of food safety information on the potential hazards of eating certain foods raw or undercooked.

Comment: Concerning §229.164(m)(2), one commenter stated that the "re-cook" requirement for roasts of beef which have been previously cooked to the specifications is not justified.

Response: The department agrees and has clarified the language in this paragraph. This change is also consistent with the recommendation from the national Conference for Food Protection.

Comment: Concerning §229.164(n), one commenter suggested that the lowering of the cold hold temperature from 7 C (45 F) to 5 C (41 F) be deleted because of lack of sound scientific evidence for growth of pathogenic organisms (i.e., *Listeria monocytogenes*) at refrigeration temperatures.

Response: The department disagrees because the requirement is valid and science-based. The U.S. FDA based their lowering of the cold hold temperature from 7 C (45 F) to 5 C (41 F) on scientific studies involving foods inoculated with *Listeria monocytogenes* held at refrigerated temperatures. No change is necessary from this comment.

Comment: Concerning §229.164(n)(3)(B)(i), one commenter states that the option to thaw foods under running water of 70 F or below is not practical in Texas.

Response: The department disagrees that a change is necessary, especially since this is only one of four thawing options. Three other thawing options are available if the cold water temperature in a particular location exceeds 70 F. The existing language in the rules is consistent with that in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.164(n)(4), two commenters stated the need for time limits during which foods can be out of temperature.

Response: The department disagrees because §229.164(n)(4)(A)-(C) specifies the parameters for cooling of cooked potentially hazardous foods and for cooling of foods prepared from ingredients at ambient temperature at the time of preparation. In addition, §229.164(n)(10) allows for foods to be out of temperature for up to four hours if certain specific requirements are met. No change was made as a result of comment.

Comment: Concerning §229.164(n)(4)(C), one commenter recommended a change in this section allowing for the cooling time requirements to be extended for cooling of shell eggs.

Response: The department disagrees because the language in the rules is dictated by House Bill 1052 which was passed in the 75th Legislative session. This statute requires eggs to be held at 45 F or less at all times after initial packing. The department does not have the prerogative to deviate from statutory requirements. No change was made as a result of comment.

Comment: Concerning §229.164(n)(5)(A)(i), one commenter asked for the depth specification for "shallow pans" used to cool foods to be three inches.

Response: The department disagrees. Standard industry practice is to use 4" shallow pans for cooling which is consistent with the standard proposed in the FDA model Food Code. This was based on bacterial inoculation studies and growth curves. No change was made as a result of comment.

Comment: Concerning §229.164(n)(6)(C)(ii), numerous commenters stated that five years was too long of a phase-in period to require that refrigeration equipment meet the 41 degree F cold hold requirement. Seven commenters stated that there should be no phase in time but that the implementation time be immediate. Four commenters stated that the industry should be given a maximum of one year within which to comply with this requirement. These commenters stated that FDA has recommended 41 degrees F since 1993 and that many local jurisdictions in Texas already have 40 degrees F or 41 degrees F as their local temperature requirement for cold holding of potentially hazardous foods. One commenter stated that the deadline for meeting this equipment requirement should be not later than December 31, 1999.

Response: The department disagrees with these commenters. There needs to be a reasonable amount of time for the industry to transition into this requirement. While much of the refrigeration equipment currently in place will already meet the requirement, there is some equipment that will be phased out. A five year grandfather period will help allow for spreading out of any replacement costs which may be incurred at the end of the grandfather period. Five years is also consistent with the time frames provided in the FDA model Food Code and the national Conference for Food Protection. No change was made as a result of comment.

Comment: Concerning §229.164(n)(6)(C)(ii), four commenters agreed with the department's position of allowing a 5-year phase in period to allow the industry to comply with the requirement that refrigeration equipment be capable of meeting the 41 degree F cold hold temperature requirement.

Response: The department agrees with these commenters and has retained the language in the rules. In addition, due to industry concerns, the grandfather period was extended for specific types of refrigeration equipment. Changes were made

in §229.169(a)(4) and §229.171(g)(7) to reflect this extension of the grandfather period.

Comment: Concerning §229.164(n)(6)(C)(ii), numerous commenters disagreed with the provision in the rules allowing a 5-year phase in period for refrigeration equipment to be capable of meeting the 41 degree Fahrenheit cold hold temperature requirement. One commenter suggested a 7-year phase in period, three commenters suggested a 10-year phase in period, and 13 commenters suggested that there be an indefinite period of time to meet compliance. The consensus of the comments was that more than five years was needed to phase out existing equipment.

Response: The department disagrees with the commenters and feels that five years is a reasonable time for compliance with this requirement. The 1993 FDA Model Food Code recommended at that time that refrigeration equipment be required to meet the 41 degree F cold hold temperature requirement. Subsequently, much of the refrigeration industry began to meet this new standard. The industry, therefore, has already had five years within which to prepare for the new temperature requirement. More importantly, most of the equipment currently in place will already meet the 41 degree F standard. The department contacted 17 manufacturers of food service refrigeration equipment to verify the cold-holding capabilities of existing equipment. In addition, jurisdictions which have already adopted 41 degrees F or colder have had very few problems meeting temperature requirements. The state of Utah adopted the 41 degree F standard in November 1996 and has reported that temperature violations are very infrequent with only 4 of 7071 (.06%) licensed food establishments failing to meet the standard, once implemented. One large Texas city submitted a comment regarding this issue stating that since they adopted the 41 degree F requirement locally in 1993, they have not experienced any unmanageable compliance issues with maintaining this temperature. Given these facts and the recommendation in the 1997 model Food Code and the national Conference of Food Protection, the department feels that five years is an adequate and reasonable time period within which to require compliance with this requirement. No change was made as a result of comment.

Comment: Concerning §229.164(n)(7), one commenter suggested deleting this paragraph because the paragraph is not easily understandable regarding when to date code, how to date code, and which type of code to use.

Response: The department disagrees with the commenter. This paragraph is needed to provide operators with guidance in determining shelf life of ready-to-eat potentially hazardous foods. To help clarify the paragraph, the department will develop separate supplemental materials on date marking for distribution at a later date. No change was made as a result of comment.

Comment: Concerning §229.164(n)(8), one commenter questioned whether deli loafs must be date marked under this section.

Response: The department disagrees since §229.164(n)(8)(D) specifically exempts whole, unsliced portions of cured and processed product with original casings intact. Deli loaves would fit into this category and would be exempted from the date marking requirement. No change was made as a result of comment.

Comment: Concerning §229.164(n)(7) and (8), one commenter stated that these paragraphs relating to the date marking of ready-to-eat potentially hazardous foods which are prepared on premise or commercially processed should be rewritten to be less restrictive and to allow the industry to determine a "reasonable shelf life".

Response: The department disagrees with this recommendation and feels that a standard needs to be specified in the rules. The FDA has rewritten this section one time and has based the shelf life parameters on bacteriological data which was reviewed by the Centers for Disease Control and Prevention. This requirement is also consistent with the position of the national Conference for Food Protection. No change was made as a result of comment.

Comment: Concerning §229.164(n)(10), one commenter recommended deletion of this paragraph stating that it would be difficult for an inspector to determine how long food had been out of temperature control.

Response: The department disagrees since there are four specific controls as specified in §229.164(n)(10)(A)-(D) which must be met before time only as a public health control may be utilized in an establishment. Also, the department feels that this new provision takes into account bacteriological growth curves which show that there is no significant growth of organisms or toxin production in the time period allowed by this paragraph. No change was made as a result of comment.

Comment: Concerning §229.164(n)(10), one commenter suggested clarification on how the department will define a potentially hazardous food.

Response: Potentially hazardous food is defined in these rules in §229.162(66). This definition will be utilized in determining if a food is potentially hazardous. No change is needed in this section.

Comment: Concerning §229.164(o), one commenter stated that the requirement in the rules to obtain a variance before "using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement" should be justified.

Response: The department disagrees because the proposed language specifically addresses food additives used as a method of preservation, not food additives added as flavor enhancements. It is the responsibility of the food manager to know if the food requires the ingredient as a preservative. If the food in these circumstances will support bacterial growth, the retailer must provide the regulatory authority documentation and request a variance. Since this potentially involves an infinite number of variations, depending on the nature of the specific recipe, the department will work with the industry on a case by case basis to determine if a variance is needed for the particular food product. No change was made as a result of comment.

Comment: Concerning §229.164(p)(2), one commenter agreed with the provisions that food should be honestly presented.

Response: The department agrees with the commenter. No changes were needed to the paragraph.

Comment: Concerning §229.164(p)(2)(B), one commenter stated that clarification was needed as to the meaning and intent of this subparagraph which relates to use of food or color additives, colored overwraps, or colored lights to misrepresent the true appearance, color, or quality of food offered for human

consumption. The commenter was also concerned that this requirement could be misinterpreted by local authorities.

Response: The department disagrees and feels that this paragraph is clear in that any "food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of food." The intent of this requirement is to prevent deception of the consumer from the colored alteration of foods which makes the food appear of greater value or quality. Colored overwraps to cover branded food items and gift packages would not be a violation, whereas color alterations to make a food appear fresher or of greater value or quality would be a violation. Other less clear examples would have to be assessed on a case by case basis. No change was made as a result of comment.

Comment: Concerning §229.164(r), one commenter requested that the phrase "or any raw animal protein" be deleted from the consumer advisory since the advisory focuses on the consumption of raw oysters.

Response: The department disagrees and has retained the language in the rules. The advisory verbiage is consistent with that in the FDA model Food Code and the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. The advisory is required only where raw molluscan shellfish are offered for sale.

Comment: Concerning §229.164(r), two commenters agreed with the subsection regarding consumer advisory.

Response: The department agrees with the commenters and has retained the language in the rules.

Comment: Concerning §229.164(s)(1), one commenter stated that this paragraph needs clarification as to the regulatory authority's procedures for reconditioning of adulterated foods.

Response: The department agrees and has added language to clarify the paragraph.

Comment: Concerning §229.164(s)(4), one commenter suggested a definition for the word "contamination" as it relates to this section and questioned whether contamination by hands would warrant destruction of a food. It was requested that this section be rewritten for clarification.

Response: The department disagrees with the commenter. Pathogens may be transmitted from person to person through contaminated food. The potential spread of illness is limited when food is discarded if it may have been contaminated by employees who are infected, or are suspected of being infected. The department also disagrees that a definition of "contamination" be added since this is a commonly understood term. This is also consistent with the language in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.165(a)(9), one commenter requested an exemption on the prohibition of using wooden wicker baskets for proofing of certain types of breads. The commenter provided suggested language as an additional paragraph.

Response: The department agrees and has added §229.165(a)(9)(E) to address this comment.

Comment: Concerning §229.165(d)(1)(B), one commenter suggested that wicker material be excluded because it can not be properly cleaned.

Response: The department agrees in part with the commenter because this subparagraph requires food-contact surfaces to be free of breaks, open seams, chips, pits, and similar imperfections. With one exception, wicker would not be allowed under this subparagraph. Also, §229.165(a)(9)(A) prohibits the use of wood wicker as a food-contact surface. New §229.165(a)(9)(E) provides the one exception by allowing wicker only for use in proofing bread provided the bread is fully cooked.

Comment: Concerning §229.165(f)(12)(E), one commenter stated that requiring temperature measuring devices to be scaled in no more than 2-degree increments would necessitate larger thermometers.

Response: The department disagrees with the commenter. Thermometers are available to meet this requirement which are not burdensome. Also, the FDA worked with the National Sanitation Foundation in establishment of this requirement to assure accuracy of calibration. This requirement in the rules is consistent with that in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.165(h)(3)and(4), one commenter questioned the requirement in these paragraphs for a thermometer and a sanitizer test kit to be required at each sink.

Response: The department disagrees because the language in these paragraphs states that thermometers and test kits be "readily accessible" and "available for use". This is not interpreted to mean one must be designated for each sink but rather that one such thermometer and/or test kit be provided near the sink facility and used by the operator for its intended purpose. One thermometer meeting these criteria could be used for multiple sinks. No change was made as a result of comment.

Comment: Concerning §229.165(k)(4), one commenter disagrees with the requirement that automatic warewashing machines be cleaned before each use if the cycles are such that the machines are cleaned as part of the warewash process.

Response: The department disagrees. Although warewash machines with an automatic wash, rinse, and sanitize sequence are technically "sanitized" as part of each cycle, there still exists the possibility for recontamination of the unit between uses, much the same as sinks, basins, or other receptacles used for washing and rinsing equipment could become dirty between uses. The language in the rules is also consistent with that in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.165(k)(6)(B), one commenter recommended adding a requirement for an additional sink for food preparation.

Response: The department disagrees because a provision for a sink for the purpose of washing produce and for thawing of foods is already included in this subparagraph. To require sinks specific to each task in a food establishment is an unreasonable requirement to place on the industry. No change was made as a result of comment.

Comment: Concerning §229.165(k)(9) one commenter stated that it is not practical to require 110 degree Fahrenheit wash water for manual warewashing.

Response: The department disagrees because adequate wash water temperature is necessary to remove organic matter such as animal fats which may be present on dirty dishes, utensils,

or equipment. The FDA recommends that water at 110 degrees Fahrenheit will accomplish this purpose. In addition, an option is presented in this paragraph allowing the use of cleaning agents designed to operate at temperatures other than 110 degrees Fahrenheit. This requirement is also consistent with that in the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.165(k)(14)(C)(i), one commenter suggested the clause be deleted because the labeling of quaternary ammonium sanitizers does not call for a water temperature, therefore, requiring a water temperature in these rules is unnecessary.

Response: The department disagrees with the commenter. Lack of temperature specifications on labels of quaternary ammonium sanitizers does not prohibit the department from specifying a temperature for use. The prescribed temperature of 24 C (75 F) is the optimum temperature for sanitizer efficacy and is consistent with the FDA model Food Code. No change was made as a result of comment.

Comment: Concerning §229.165(l)(1)(B), one commenter questioned the requirement to calibrate thermometers and asked who would do the calibration.

Response: The department disagrees because thermometers can be out of calibration and should be maintained to the accuracy level specified by the type of thermometer and the location where it is used. Many thermometers can be calibrated by the operator with instructions provided by the manufacturer. No change was made as a result of comment.

Comment: Concerning §§229.165(n)(1)(A)(i) and (B), one commenter requested changing the rules to not require that meat processing equipment be cleaned between uses as long as the meat products are processed in an ascending order with regard to required cook temperatures. The commenter further states that it has long been an industry practice that cleaning is not required between processing of beef and pork as long as the beef is processed first. This is based on the premise that pork is required to be cooked to 155 degrees Fahrenheit and beef to 145 degrees Fahrenheit, unless comminuted.

Response: The department disagrees that a language change is needed. It is the intent of §229.165(n)(1)(B) that species can be processed in order of lowest required cook temperature to highest required cook temperature without cleaning of equipment between species. The department clarified this intent with FDA in order to respond to the commenter's concern. No change was made as a result of comment.

Comment: Concerning §229.165(n)(1)(D)(ii), one commenter offered a temperature chart and requested that this clause be amended to include a sliding scale based on room temperature in refrigerated meat processing areas.

Response: The department disagrees at this time. Although this recommendation was accepted at the national Conference for Food Protection, the FDA has yet to review the science and accept this proposal relating to the time-temperature relationships presented in the chart. In addition, 229.165(n)(1)(D)(vi)(IV) provides the regulatory authority with the latitude to consider other options based on the temperature at which the food is maintained during the processing operation. No change was made as a result of comment.

Comment: Concerning §229.165(t)(4), one commenter suggested rewriting this paragraph to clarify laundering of wiping cloths in retail food establishments. The commenter provided suggested language for the clarification.

Response: The department agrees and has made the changes as requested.

Comment: Concerning §229.167(b)(1), one commenter suggested language be added that would require outdoor surface areas for walking and driving be constructed and maintained to prevent pooling of liquids which may spill or flow across the surface.

Response: The department disagrees with the commenter that language be added to the paragraph. The paragraph already requires the areas to be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions. Preventing the pooling of liquids is adequately addressed in the paragraph. No change was made as a result of comment.

Comment: Concerning §167(c)(4)(A), one commenter specified that carpet may not be used in dry storage areas.

Response: The department disagrees because prohibiting carpet in all dry storage areas would preclude storage of condiments in the wait stations and dining areas of many food service establishments. No known public health hazards are associated with this practice. No change was made as a result of comment.

Comment: Concerning §229.167(d)(4), one commenter suggested consideration of doorless toilet rooms that have separate ventilation, fresh air make-up, and a proper zig zag entrance if adequate distance (>50 feet) from food preparation/storage areas is maintained and air change requirements are met. The commenter also suggested that the requirements of the ADA be considered.

Response: The department disagrees. Doors on toilet rooms are needed to protect food preparation areas from flies and other insects which may move from the toilet area to the food preparation area. ADA allows doors on public rooms in public facilities. The department will consider specific exceptions under the variance provision of the rules on a case by case basis. No change was made as a result of comment.

Comment: Concerning §229.167(g)(2), one commenter stated that the lighting requirement of 20 footcandles in equipment such as small refrigerators is too restrictive.

Response: The department disagrees. The requirement in the existing rules for such equipment is actually higher (30 footcandles) than the requirement. Since there have been virtually no compliance problems in meeting the current more restrictive standard, there is no reason to believe that the less restrictive standard cannot be met. No change was made as a result of comment.

Comment: Concerning §229.167(n), one commenter disagrees that a separate area in a food establishment should be designated to store distressed merchandise being held by the operator for credit, redemption, or return.

Response: The department disagrees. Distressed merchandise must be segregated from other nondistressed food items so that they are not inadvertently used in the food establishment.

The department does not intend for this to require a separate room or completely isolated section of a facility but rather any type of physical separation wherein the distressed products can be identified so as not to be mistaken and commingled with the other nondistressed foods. No change was made as a result of comment.

Comment: Concerning §229.168(e), one commenter suggests a new subsection to read: "a food container may not be used to store, transport, or dispense poisonous or toxic materials".

Response: The department agrees and has made the recommended change in §229.168(e).

Comment: Concerning §229.169(b)(1), one commenter suggested that mobile food units be required to report daily to a central preparation facility for supplies, cleaning and servicing, including discharge of wastewater.

Response: The department disagrees with the commenter because there may be instances when returning to a central preparation facility is not necessary or practical and other approved facilities may be available for necessary services. No change was made as a result of comment.

Comment: Concerning 229.169(b)(2), one commenter requested clarification if rodent proofing is required in a central preparation facility.

Response: The paragraph does require rodent proofing because it requires that the central preparation facility be constructed and operated in compliance of these rules. Also, to further clarify the issue, the definition of food establishment includes a central preparation facility, requiring it to be constructed and operated in compliance of these rules. No changes to the rules are necessary.

Comment: Concerning §229.170(i), three commenters suggested that temporary food establishments not be allowed the use of chemically treated towelettes in place of soap and water.

Response: The department disagrees with the commenters because use of chemically treated towelettes under certain conditions is permissive, not prescriptive. In the absence of handwash facilities, towelettes may adequately serve the need to clean hands. The use of towelettes must also be approved by the regulatory authority. No change was made as a result of comment.

Comment: Concerning §229.170(k)(2), one commenter suggested that it is not feasible to require temporary facilities to cover all outer openings.

Response: The department agrees with the commenter and an exclusion provision for screening is already found in §229.170(k)(3). No change is necessary to the proposed rules.

Comment: Concerning §229.170(k)(3), one commenter suggested deleting this paragraph because it allows a temporary food establishment an exception from covering all outer openings if environmental contaminants or pests are absent.

Response: The department disagrees with the commenter. It is neither practical nor necessary to require total screening of outer openings in temporary food establishments unless contamination is eminent. No change was made as a result of comment.

Comment: Concerning §229.171(d), two commenters stated that HACCP plans were not needed in retail food establishments for every recipe in the restaurant.

Response: The department agrees and there is currently no such requirement contained in the rules. A HACCP plan is required only if a variance from the rules is requested or if the facility engages in a specialized process such as vacuum packaging. No change is needed pursuant to this comment.

Comment: Concerning §229.171(d), two commenters stated full support for HACCP procedures.

Response: The department agrees. The rules are based on HACCP principles and require HACCP plans under certain conditions. No change is needed pursuant to this comment.

Comment: Concerning §229.171(d), one commenter stated that the rules should specify who is required to submit a HACCP plan to the regulatory authority.

Response: The department disagrees because these requirements are already specifically described in §229.164(o)(2) and §229.165(f)(10)(B) of the rules. No change was made as a result of comment.

Comment: Concerning §229.171(d)(2)(A), one commenter suggested that the subparagraph be clarified to make it specific that the HACCP plan contents identify the food and/or process to which the HACCP plan relates rather than to categorize the types of potentially hazardous foods specified in the plan.

Response: The department disagrees because the intent of requiring categorization is to minimize separate HACCP plans for foods utilizing similar processes. No change was made as a result of comment.

Comment: Concerning §229.171(h), one commenter suggested clarification on how the department will assess the risk associated with a restaurant's potential for causing foodborne illness.

Response: The department offers the following clarification. Inspection frequency will be prioritized upon assessment of a food establishment's history of compliance with these rules and the potential for causing foodborne illness. Section 229.171(h)(1)-(7) lists the factors to be considered in determining a risk category of a food establishment. No change is necessary in the proposed rules.

Comment: Concerning §229.171(p)(1), one commenter suggested clarification of the person required to report a communicable disease and which diseases are reportable.

Response: The department agrees that the paragraph does not give details on who should report specific diseases but the paragraph does refer the reader to 25 TAC, Chapter 97, §97.2. The intent of the paragraph is to provide a reference to an existing state statute, not to duplicate the statute in these rules. Readers of these rules are encouraged to become aware of the various state statutes that may affect their food establishments. It would be duplicative and cumbersome for the department to append copies of all referenced statutes that pertain to various aspects of a food establishment. The department does list the reportable communicable diseases that are transmitted by food in §229.171(p)(2). No change was made as a result of comment.

Comment: Concerning §229.173(b), one commenter suggested clarification whether food employees are required to perform the

Heimlich maneuver because a sign is required depicting the maneuver for dislodging an obstruction from a choking person.

Response: This section complies with the Texas Health and Safety Code, §438.051. Neither the statute nor the rules imply or mandate that the public or food employees administer the Heimlich maneuver but does require that a poster depicting the maneuver be placed in view of either employees or customers. No change was made as a result of comment.

Comment: Concerning §229.173(b), one commenter recommended modifying the language regarding the requirement and placement location of Heimlich maneuver posters.

Response: The department disagrees with the commenter. The rules are consistent with the enabling legislation, Texas Health and Safety Code, Chapter 438, Subchapter E. No change was made as a result of comment.

Comment: Concerning Figure: 25 TAC §229.171(j)(6), one commenter requested clarification on the demerit scoring system on the new inspection form versus the percentile system currently being used.

Response: The department offers the following clarification. The percentile system adds the total number of debited points during the inspection and subtracts the number from 100, providing the score. The demerit system will be the number of weighted debited items added, cumulatively, and not subtracted from 100. The total cumulative number of debited points will therefore be the actual score. No change was made as a result of comment.

Comment: Concerning Figure: 25 TAC §229.171(j)(6), one commenter stated support for the new inspection form as an industry evaluation tool.

Response: The department agrees with the commenter and will retain the form. No change was made as a result of comment.

Comments on the proposed rules were received from Foodmaker, Garland Health Department, Dallas County Department of Health and Human Services, City of Dallas, City of Arlington, North Texas Food Safety Committee, City of Plano, H.E. Butt Grocery Company, Taco Bell, Ft. Worth Public Health Department, Texas Association of Local Health Officials, TRI-ARC Restaurant Group, City of Duncanville, Whataburger, Inc., Richardson Health Department, Albertson's, Inc., Coastal Oyster Leaseholders Association, Inc., Texas Restaurant Association and affiliates, Austin-Travis County Health and Human Services Department, City of Farmers Branch, U.S. Food and Drug Administration, City of Houston Health Department, Ector County Health Department, Dairy Queen, Golden Corral, Food Star Restaurant Group, Ector County Senior Services Center, Harvey Hotel, Jumburrito Mexican Food Restaurants, National Council of Chain Restaurants, Brinker International, TGI Friday's, Certified Food Service Consulting, Texas Petroleum Marketers and Convenience Stores Association, and the Texas Retailers Association.

In addition, individual comments were received from retail food operators and from other individuals. None of these commenters were against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and some had specific objections to certain provisions of the rules which are addressed in the comment sections above.

One commenter representing Ft. Bend County was opposed to the rules in their entirety because he felt that the rules were incomprehensible as written.

Subchapter J. Food Service Sanitation

25 TAC §§229.161-229.171, 229.173

The repeal is adopted under the Health and Safety Code, §437.0056, which requires the Texas Board of Health (board) to adopt rules for granting and maintaining retail food permits in areas not regulated by counties and public health districts; 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; and Health and Safety Code §431.241.

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 16, 1998.

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Texas Department of Health

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



Subchapter J. Texas Food Establishments

25 TAC §§229.161-229.171, 229.173-229.175

The new rules are adopted under the Health and Safety Code, §437.0056, which requires the Texas Board of Health (board) to adopt rules for granting and maintaining retail food permits in areas not regulated by counties and public health districts; 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; and Health and Safety Code, Chapter 438.

§229.162. Definitions.

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

(1) Additive-

(A) Food additive is a substance which affects the characteristics of any food as specified in the Texas Health and Safety Code, Chapter 431, §431.002(17).

(B) Color additive is any material imparting color to a food as stated in the Texas Health and Safety Code, Chapter 431, §431.002(6).

(2) Adulterated food - A food containing any poisonous or deleterious substance as specified in the Texas Health and Safety Code, Chapter 431, §431.081.

(3) Approved - Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(4) Bed and Breakfast -

(A) Bed and Breakfast Limited means:

(i) an establishment with seven or fewer rooms for rent;

(ii) that serves only breakfast to overnight guests;

(iii) the establishment is not a retail food establishment; and

(iv) the owner or manager shall successfully complete a food manager's certification course accredited by the department.

(B) Bed and Breakfast Extended means:

(i) an establishment with more than seven rooms for rent; or

(ii) that provides food service other than breakfast to overnight guests; and

(iii) the establishment must meet the specific requirements as outlined in §229.174 of this title (relating to Bed and Breakfast Extended Establishments).

(C) Bed and Breakfast Food Establishment means:

(i) an establishment that provides food service other than to its overnight guests; and

(ii) the establishment must meet the rules and regulations applicable to retail food establishments.

(5) Beverage - A liquid for drinking, including water.

(6) Bottled drinking water - Water from an approved source that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(7) Certification number - A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(8) Child care center - Any facility licensed by the regulatory authority to receive 13 or more children for child care which prepares food for on-site consumption.

(9) Cleaned in place (CIP) - The circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(10) Code of Federal Regulations (CFR) - The compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal government. Citations in these Rules to the CFR refer sequentially to the title, part, and section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, §1010.

(11) Comminuted - Reduced in size by methods including chopping, flaking, grinding, or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

(12) Common dining area - A central location in a group residence where people gather to eat at mealtime. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.

(13) Confirmed disease outbreak - A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

(14) Consumer - A person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(15) Corrosion-resistant material - A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(16) Critical control point - A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(17) Critical item - A provision of these rules that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, injury, or environmental health hazard.

(18) Critical limit - The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(19) Department - The Texas Department of Health.

(20) Drinking water - Water that meets 30 TAC §§290.101-290.121 relating to (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems). The term is traditionally known as "potable water" and includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(21) Dry storage area - A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

(22) Easily cleanable - A characteristic of a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; and varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

(23) Easily movable - Weighing 14 kg (30 pounds) or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than 14 kg (30 pounds) of force to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(24) Employee - The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(25) EPA - The U.S. Environmental Protection Agency.

(26) Equipment - An article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. The term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(27) Exotic animal - Member of a species of game not indigenous to this state including axis deer, nilga antelope, red sheep, or other cloven-hoofed ruminant animals. Exotic animals are considered livestock as defined in these rules and are amenable to inspection under Texas Health and Safety Code, Chapter 433, §433.035 (Inspection and Other Regulation of Exotic Animals in Interstate Commerce).

(28) Fish - Fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. The term includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(29) Food - A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(30) Foodborne disease outbreak - An incident in which two or more persons experience a similar illness after ingestion of a common food, and epidemiological analysis implicates the food as the source of the illness; except that in cases of botulism or chemical poisoning, one ill person shall constitute an outbreak.

(31) Food-contact surface - A surface of equipment or a utensil with which food normally comes into contact; or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

(32) Food employee - An individual working with un-packaged food, food equipment or utensils, or food-contact surfaces.

(33) Food establishment - An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation; if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution; or food bank; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) The term includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous;

a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a Bed and Breakfast Limited facility as defined in these rules; or a private home.

(34) Food processing plant - A commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food establishment as previously defined.

(35) Game animal - An animal, the products of which are food, that is not classified as livestock or fish as defined in these rules. The term includes animals such as wild rabbit, squirrel, opossum, nutria, muskrat, and nonaquatic reptiles such as rattlesnake.

(36) General use pesticide - A pesticide that is not classified by the U.S. Environmental Protection Agency (EPA) for restricted use as specified in 40 CFR 152.175.

(37) Grade A standards - The requirements of the U.S. Public Health Service/Food and Drug Administration (USPHS/FDA) "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey" with which certain fluid and dry milk and milk products must comply.

(38) Group residence - A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term health care facility.

(39) Hazard - A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(40) Hazard Analysis Critical Control Point (HACCP) - A rational, systematic approach that identifies and monitors specific foodborne hazards (biological, chemical, or physical) that may adversely affect the safety of the food product. This system utilizes the HACCP Principles as defined by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), 1992, or its successor document.

(41) Hazard Analysis Critical Control Point (HACCP) plan - A written document that delineates the formal procedures for following the HACCP principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(42) Hermetically sealed container - A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(43) Highly susceptible population - A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults; and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a child care center.

(44) Imminent health hazard - A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

(45) Injected - Manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its

interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."

(46) Kitchenware - Food preparation and storage utensils.

(47) Law - Applicable local, state, and federal statutes, regulations, and ordinances.

(48) Linens - Fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(49) Livestock - Cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds. Livestock are amenable to inspection.

(50) Meat - The flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, exotic animals as specified in §229.164(b)(7)(A)(ii) and (iii) and game animals as specified in §229.164(b)(7)(C)(ii) and (iii) of this title (relating to Food) that is offered for human consumption.

(51) Mobile food establishment - a vehicle mounted food establishment designed to be readily moveable.

(52) Milligrams per liter (mg/L) - The metric equivalent of parts per million (ppm).

(53) Molluscan shellfish - Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(54) Outfitter operation - any operations such as trail rides or river raft trips where food is offered to patrons and which operates out of a central preparation location or food establishment.

(55) Packaged - Bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. The term does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

(56) Permit - The document issued by the regulatory authority that authorizes a person to operate a food establishment.

(57) Permit holder - The entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and who possesses a valid permit to operate a food establishment.

(58) Person - An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(59) Person in charge - The individual present at a food establishment who is responsible for the operation at the time of inspection.

(60) Personal care items - Items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. The term includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(61) "pH" - the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate

acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(62) Physical facilities - The structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(63) Plumbing fixture - A receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(64) Plumbing system - The water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(65) Poisonous or toxic materials - Substances that are not intended for ingestion and are included in four categories:

(A) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides, which include substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(66) Potentially hazardous food - A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of *Clostridium botulinum*; or in raw shell eggs, the growth of *Salmonella enteritidis*.

(A) The term includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified in this definition.

(B) The term does not include an air-cooled hard-boiled egg with shell intact; a food with a water activity (a_w) value of 0.85 or less; a food with a pH level of 4.6 or below when measured at 24 degrees Celsius (75 degrees Fahrenheit); and a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution. The term also does not include a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. enteritidis* in eggs or *C. botulinum* cannot occur, such as a food that has an a_w and a pH that are above the levels specified above and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms. The term also does not include a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth

of microorganisms as specified in the definition of a potentially hazardous food.

(67) Poultry - Any domesticated bird whether live or dead as defined in the Texas Health and Safety Code, Chapter 433, §433.003. Chickens, turkeys, ducks, geese, guineas, migratory waterfowl, game bird or squab such as pheasant, partridge, quail, and grouse, whether live or dead are examples of poultry. The term also includes ratites (e.g., ostrich, emu, and rhea) which are amenable to inspection as poultry.

(68) Premises - The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permit holder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(69) Primal cut - A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

(70) Public water system - Has the meaning stated in 30 TAC §290.101-§290.121 relating to (Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(71) Pushcart - A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. A push cart is classified as a mobile food establishment.

(72) Ready-to-eat food - Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. The term includes unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under §229.164(k) of this title (relating to Food); raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(73) Reduced oxygen packaging - The reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen. The term includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

(74) Refuse - Solid waste not carried by water through the sewage system.

(75) Regulatory authority - The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(76) Restricted use pesticide - A pesticide product that contains the active ingredients specified in 40 CFR 152.175 (Pesticides) classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

(77) Roadside food vendor - A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Potentially hazardous foods shall not be prepared or processed by a roadside food vendor. A roadside food vendor is classified as a food establishment.

(78) Safe material - An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in Chapter 431 of the Texas Health and Safety Code; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(79) Sanitization - The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

(80) Sealed - Free of cracks or other openings that allow the entry or passage of moisture.

(81) Servicing area - An operating base location to which a mobile food establishment or transportation vehicle returns as needed for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(82) Sewage - Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(83) Shellfish control authority - Texas Department of Health Seafood Safety Division.

(84) Shellstock - Raw, in-shell molluscan shellfish.

(85) Shucked shellfish - Molluscan shellfish that have one or both shells removed.

(86) Single-service articles - Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.

(87) Single-use articles - Utensils and bulk food containers designed and constructed to be used once and discarded. The term includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in §229.165(a)(1), (c)(1), and (d)(1) of this title (relating to Equipment, Utensils, and Linens) for multi-use utensils.

(88) Slacking - The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23 degrees Celsius (-10 degrees Fahrenheit) to -4 degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

(89) Smooth - A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel; a nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(90) Support animal - A trained animal such as a seeing eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

(91) Table-mounted equipment - Equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(92) Tableware - Eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

(93) Temperature measuring device - A thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(94) Temporary food establishment - A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(95) USDA - The United States Department of Agriculture.

(96) Utensil - A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices.

(97) Vending machine - A self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(98) Vending machine location - The room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used to service and maintain the vending machines.

(99) Warewashing - The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(100) Water activity (a_w) - A measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

§229.163. *Management and Personnel.*

(a) Responsibility, assignment. The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

(b) Knowledge, demonstration. Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of these rules. The person in charge shall demonstrate this knowledge by compliance with these rules, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, or by responding correctly to the inspector's questions as they relate to the specific food operation. The person in charge may demonstrate such knowledge by:

(1) describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

(2) explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

(3) describing the symptoms associated with the diseases that are transmissible through food;

(4) explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

(5) explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

(6) stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;

(7) stating the required temperatures and times for safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

(8) describing the relationship between the prevention of foodborne illness and the management and control of the following:

(A) cross-contamination;

(B) hand contact with ready-to-eat foods;

(C) handwashing; and

(D) maintaining the food establishment in a clean condition and in good repair;

(9) explaining the relationship between food safety and providing equipment that is:

(A) sufficient in number and capacity; and

(B) properly designed, constructed, located, installed, operated, maintained, and cleaned;

(10) explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

(11) identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

(12) identifying poisonous and toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

(13) identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of these rules;

(14) explaining the details of how the person in charge and food employees comply with the Hazard Analysis Critical Control Point (HACCP) plan if a plan is required by the law, these rules, or an agreement between the regulatory authority and the establishment; and

(15) explaining the responsibilities, rights, and authorities assigned by these rules to the:

(A) food employee;

(B) person in charge; and

(C) regulatory authority.

(c) Duties, person in charge. The person in charge shall ensure that:

(1) food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under §229.167(d)(10) of this title (relating to Physical Facilities);

(2) persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

(3) employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with these rules;

(4) employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

(5) employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

(6) employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

(7) employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(8) consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under §229.164(k)(1)(C) and §229.164(r) of this title (relating to Food) that the food is not cooked sufficiently to ensure its safety;

(9) employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, hydrogen ion concentration (pH), temperature, and exposure time for chemical sanitizing;

(10) consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets;

(11) employees are preventing cross-contamination of ready-to-eat food with their bare hands by proper handwashing or the use of suitable utensils such as deli tissue, spatulas, tongs or single-use gloves; and

(12) employees are trained in basic food safety principles.

(d) Disease or medical condition.

(1) Responsibility of the person in charge to require reporting by food employees and applicants to whom a conditional offer of employment is made. The permit holder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant

to whom a conditional offer of employment is made shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subparagraph (C) of this paragraph, if the food employee or applicant to whom a conditional offer of employment is made:

(A) is diagnosed with an illness due to:

- (i) *Salmonella typhi*;
- (ii) *Shigella* spp.;
- (iii) *Escherichia coli* O157:H7 or other enterohemorrhagic *E. coli*; or
- (iv) hepatitis A virus;

(B) has a symptom caused by illness, infection, or other source that is:

such as:

- (I) diarrhea;
- (II) fever;
- (III) vomiting;
- (IV) jaundice; or
- (V) sore throat with fever; or

(ii) a lesion containing pus such as a boil or infected wound;

(C) had a past illness within the past three months from an infectious agent specified in subparagraph (A) of this paragraph; or

(D) meets one or more of the following high-risk conditions:

(i) is suspected of causing, or being exposed to, a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the food employee or applicant to whom a conditional offer of employment is made:

- (I) prepared food implicated in the outbreak;
- (II) consumed food implicated in the outbreak;

or

(III) consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent; or

(ii) lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus; or

(iii) lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus.

(2) Exclusions and restrictions. The person in charge shall:

(A) exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in paragraph (1)(A) of this subsection;

(B) except as specified under subparagraph (C) or (D) of this paragraph, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:

(i) suffering from a symptom specified in paragraph (1)(B) of this subsection; or

(ii) not experiencing a symptom of acute gastroenteritis specified in paragraph (1)(B)(i) of this subsection but has a stool that yields a specimen culture that is positive for *Salmonella typhi*, *Shigella* spp. and *E. coli* O157:H7;

(C) if the population served is a highly susceptible population, exclude a food employee who:

(i) is experiencing a symptom of acute gastrointestinal illness specified in paragraph (1)(B)(i) of this subsection and meets a high-risk condition specified in paragraph (1)(D) of this subsection;

(ii) is not experiencing a symptom of acute gastroenteritis specified in paragraph (1)(B)(i) of this subsection but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or *Escherichia coli* O157:H7;

(iii) had a past illness from *S. typhi* within the last three months; or

(iv) had a past illness from *Shigella* spp. or *E. coli* O157:H7 within the last month; and

(D) for a food employee who is jaundiced:

(i) if the onset of jaundice occurred within the last seven calendar days, exclude the food employee from the food establishment; or

(ii) if the onset of jaundice occurred more than seven calendar days before:

(I) exclude the food employee from a food establishment that serves a highly susceptible population; or

(II) restrict the food employee from activities specified in subparagraph (B) of this paragraph, if the food establishment does not serve a highly susceptible population.

(3) Removal of exclusions and restrictions.

(A) The person in charge may remove an exclusion specified in paragraph (2)(A) of this subsection if:

(i) the person in charge obtains approval from the regulatory authority; and

(ii) the person excluded as specified in paragraph (2)(A) of this subsection provides to the person in charge written medical documentation from a physician licensed to practice medicine that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in §229.171(o)(4) of this title (relating to Compliance and Enforcement).

(B) The person in charge may remove a restriction specified in:

(i) paragraph (2)(B)(i) of this subsection if the restricted person:

(I) is free of the symptoms specified in paragraph (1)(B) of this subsection and no foodborne illness occurs that may have been caused by the restricted person;

(II) is suspected of causing foodborne illness but is free of the symptoms specified in paragraph (1)(B) of this subsection, and provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in §229.171(o)(4) of this title; or

(III) provides written medical documentation from a physician licensed to practice medicine stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, ulcerative colitis or irritable bowel syndrome; or

(ii) paragraph (2)(B)(ii) of this subsection if the restricted person provides written medical documentation from a physician, licensed to practice medicine, according to the criteria specified in §229.171(o)(4) of this title that indicates the stools are free of *Salmonella typhi*, *Shigella* spp., *E. coli* O157:H7, or other enterohemorrhagic *E. coli*.

(C) The person in charge may remove an exclusion specified in subsection (d)(2)(C) of this section if the excluded person provides written medical documentation from a physician licensed to practice medicine:

(i) that specifies the person is free of:

(I) the infectious agent of concern, as specified in §229.171(o)(4) of this title; or

(II) jaundice as specified under subparagraph (D) of this paragraph if hepatitis A virus is the infectious agent of concern; or

(ii) if the person is excluded under subsection (d)(2)(C)(i) of this section stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

(D) The person in charge may remove an exclusion specified in paragraph (2)(D)(i) and (ii)(I) of this subsection and a restriction specified in paragraph (2)(D)(ii)(II) of this subsection if:

(i) no foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that the person is free of hepatitis A virus as specified in §229.171(o)(4) of this title; or

(ii) the excluded or restricted person is suspected of causing foodborne illness and complies with clause (i) of this subparagraph.

(4) Responsibility of a food employee or an applicant to whom a conditional offer of employment is made to report to the person in charge. A food employee or a person to whom a conditional offer of employment is made shall:

(A) in a manner specified in paragraph (1) of this subsection, report to the person in charge the information specified in paragraph (1)(A)-(D) of this subsection; and

(B) comply with exclusions and restrictions that are specified in paragraph (2) of this subsection.

(e) Hands and arms.

(1) Clean condition. Food employees shall keep their hands and exposed portions of their arms clean.

(2) Cleaning procedure. Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under §229.166(f)(2)(A) of this title (relating to Water, Plumbing, and Waste) by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall clean the areas underneath the fingernails and between the fingers. Use of automated handwashing equipment acceptable to the regulatory authority can be substituted for the above procedures provided the equipment is installed and operated per the manufacturer's instructions.

(3) Special handwash procedures. Employees not utilizing suitable utensils or single-use gloves when handling ready-to-eat foods shall wash hands using the cleaning procedure specified in subsection (e)(2) of this section and follow this procedure with use of an approved hand sanitizer, or chemical hand sanitizing solution used as a hand dip.

(4) When to wash. Food employees shall clean their hands and exposed portions of their arms as specified under paragraph (2) of this subsection at the following times:

(A) after touching bare human body parts other than clean hands and clean, exposed portions of arms;

(B) after using the toilet room;

(C) after caring for or handling support animals as allowed under subsection (k)(2) and (3) of this section;

(D) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(E) after handling soiled equipment or utensils;

(F) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;

(G) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(H) when switching between working with raw foods and working with ready-to-eat foods; or

(I) after engaging in other activities that contaminate the hands.

(5) Where to wash. Food employees shall clean their hands in a handwashing lavatory or automated handwashing equipment and may not clean their hands in a sink used for food preparation, warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(6) Hand sanitizers.

(A) If used, a hand sanitizer, or a chemical hand sanitizing solution used as a hand dip, shall:

(i) have active antimicrobial ingredients that are:

(I) listed as safe and effective for application to human skin as an antiseptic handwash in a monograph for OTC (over-the-counter) Health-Care Antiseptic Drug Products; or

(II) previously authorized, and listed for such use in the USDA List of Proprietary Substances and Nonfood Compounds, Miscellaneous Publication No. 1419;

(ii) have components that are:

(I) regulated for the intended use as food additives as specified in 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; or

(II) generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug, and Cosmetic Act §201(s); or

(III) exempted from the requirement of being listed in the federal food additive regulations as specified in 21 CFR 170.39 Threshold of Regulation for Substances Used in Food-contact Articles; and

(iii) be applied only to hands that are cleaned as specified under subsection (e)(2) and (3) of this section.

(B) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subparagraph (A)(ii) of this paragraph, use shall be:

(i) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(ii) limited to situations that involve no direct contact with food by the bare hands.

(C) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

(f) *Fingernails, maintenance.* Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(g) *Jewelry, prohibition.* While preparing food, food employees may not wear jewelry on their arms and hands. This subsection does not apply to a plain ring such as a band style ring.

(h) *Outer clothing, clean condition.* Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(i) *Food contamination prevention.*

(1) *Eating, drinking, or using tobacco.*

(A) Except as specified in subparagraph (B) of this paragraph, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

(B) A food employee may drink from a nonspillable, closed beverage container if the container is handled to prevent contamination of:

(i) the employee's hands;

(ii) the container; and

(iii) exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(2) *Discharges from the eyes, nose, and mouth.* Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(j) *Hair restraints, effectiveness.*

(1) *Use required.* Except as provided under paragraph (2) of this subsection, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively control and keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(2) *Exceptions.* This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods; hosts and hostesses; and wait staff if they present a minimal risk of contaminating exposed food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles.

(k) *Animals, handling prohibition.*

(1) *Handling, prohibition.* Except as specified in paragraph (2) of this subsection, food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under §229.167(p)(15)(B)(ii)-(iv) of this title (relating to Physical Facilities).

(2) *Food employees with support animals.* Food employees with support animals may handle or care for their support animals if they wash their hands as specified under subsection (e)(2) and (3) and (4)(C) of this section before working with exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(3) *Food employees handling fish, shellfish, crustacea.* Food employees handling edible fish in aquariums, shellfish or crustacea in display tanks shall wash their hands before handling exposed food; cleaning equipment, utensils, and linens; or unwrapped single-service and single-use articles.

§229.164. *Food.*

(a) *Condition safe, unadulterated, and honestly presented.* Food shall be safe, unadulterated, and, as specified under subsection (p)(2) of this section, honestly presented.

(b) *Approved sources.*

(1) *Compliance with food law.*

(A) Food shall be obtained from sources that comply with applicable laws and are licensed by the state regulatory authority having jurisdiction over the processing and distribution of the food.

(B) Food prepared in a private home, except as allowed in these rules, or from an unlicensed food manufacturer or wholesaler, is considered to be from an unapproved source and may not be used or offered for human consumption in a food establishment.

(C) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified under subsection (c)(8) and (9) of this section.

(D) Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection (k)(1)(C) of this section shall be obtained from a supplier that freezes the fish as specified under subsection (l)(1) of this section; or shall be frozen on the premises as specified under subsection (l)(1) of this section and records shall be retained as specified under subsection (l)(3) of this section.

(2) *Food in a hermetically sealed container.* Food in a hermetically sealed container shall be obtained from a food processing

plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(3) Fluid milk and milk products. Fluid milk and milk products shall be obtained from sources that comply with Grade A standards as specified in law.

(4) Fish.

(A) Fish may not be received for sale or service unless they are commercially and legally caught or harvested, or otherwise approved by the regulatory authority.

(B) Molluscan shellfish that are recreationally caught may not be received for sale or service.

(5) Molluscan shellfish.

(A) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Manual of Operations, or its successor document.

(B) Molluscan shellfish shall be from sources that are currently certified by the appropriate state or national shellfish control authority.

(6) Exotic animals and game animals.

(A) If exotic animals are received for sale or service, they shall:

(i) be commercially raised for food and:

(I) slaughtered, processed, and deemed to be "inspected and approved" under an inspection program administered by U.S.D.A. in accordance with 9 CFR 352 Voluntary Exotic Animal Program; or

(II) slaughtered, processed, and deemed to be "inspected and passed" under a meat and poultry inspection program administered by the department or any other state meat inspection program deemed equal to U.S.D.A. inspection;

(ii) as allowed by law, for exotic animals that are live caught, be slaughtered and processed as required in paragraph (6)(A)(i)(I) or (II) of this subsection;

(iii) as allowed by law, for exotic animals that are field dressed:

(I) receive an antemortem and postmortem examination by the appropriate inspection personnel as described in paragraph (6)(A)(i)(I) or (II) of this subsection; and

(II) be field dressed, transported, and processed according to the requirements specified by the appropriate regulatory authority as described in paragraph (6)(A)(i)(I) or (II) of this subsection.

(B) No exotic animal or game animal may be received for sale or service if it is a species that is listed in 50 CFR 17 Endangered and Threatened Wildlife and Plants.

(C) Game animals must be from a source approved by the regulatory authority and must be commercially processed. Approved sources include:

(i) as allowed by law, commercially raised indigenous game animals;

(ii) indigenous game animals harvested under the authority of the Texas Parks and Wildlife Department, which are wholesome at the time of delivery to a commercial processor; and

(iii) other hunter killed indigenous game animal species, such as rattlesnakes, which are wholesome at the time of delivery to a commercial processor.

(c) Specifications for receiving.

(1) Temperature.

(A) Except as specified in subparagraph (B) of this paragraph, refrigerated, potentially hazardous food shall be at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or below when received.

(B) Foods such as milk, molluscan shellfish, and shell eggs may be received at the temperature specified in laws governing their distribution.

(C) Potentially hazardous food that is cooked to a temperature and for a time specified under subsection (k) of this section and received hot shall be at a temperature of 60 degrees Celsius (140 degrees Fahrenheit) or above.

(D) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

(E) Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

(2) Additives. Food may not contain unapproved food additives or additives that exceed amounts allowed in 21 CFR, 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 CFR, 181-186, substances that exceed amounts specified in 9 CFR 318.7 Approval of substances for use in the preparation of products, 9 CFR 381.147 Restrictions on the use of substances in poultry products, or pesticide residues that exceed provisions specified in 40 CFR 185 Tolerances for Pesticides in Food.

(3) Shell eggs. Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR Part 56 - Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight classes for Shell Eggs, and 7 CFR Part 59 - Regulations Governing the Inspection of Eggs and Egg Products.

(4) Liquid, frozen, and dry eggs. Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

(5) Fluid milk, dry milk, and milk products.

(A) Fluid milk, dry milk, and milk products complying with Grade A standards as specified in law shall be obtained pasteurized.

(B) Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with the Texas Frozen Desserts Manufacturer Licensing Act, Texas Health and Safety Code, Chapter 440.

(C) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are provided for in the CFR, such as 21 CFR 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.

(6) Package integrity. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(7) Ice. Ice used as a food or a cooling medium shall be made from drinking water.

(8) Shucked shellfish, packaging and identification. Raw shucked shellfish shall be obtained in nonreturnable packages legibly bearing the name and address of the person who shucks and packs or repacks the shellfish, the person's authorized certification number, and the "sell by" date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.

(9) Shellstock identification. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the Texas Molluscan Shellfish Rules, 25 TAC, Chapter 241, §241.50-§241.67.

(A) Except as specified under subparagraph (C) of this paragraph, each dealer's tag or label shall contain the following information in the following order:

(i) the dealer's name and address, and the certification number assigned by the shellfish control authority;

(ii) the original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish were harvested;

(iii) the date of harvesting;

(iv) the most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;

(v) the type and quantity of shellfish;

(vi) the following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS;" and

(vii) the consumer information statement required as specified in subsection (r) of this section.

(B) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as required in subparagraphs (A) and (B) of this subsection shall be subject to detention as provided in Texas Health and Safety Code, Chapter 436.

(C) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

(D) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subparagraph (A)(i) of this paragraph, separate dealer tags or labels need not be provided.

(10) Shellstock, condition. When received by a food establishment, shellstock shall be reasonably free of mud, shall be alive, and have unbroken shells. Dead shellstock or shellstock with badly broken shells shall be discarded.

(d) Original containers and records.

(1) Molluscan shellfish, original container.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, molluscan shellfish may not be removed from the

container in which they were received other than immediately before sale or preparation for service.

(B) Shellstock may be removed from the container in which they were received, displayed on drained ice, or held in a display container, maintained at or below 41 degrees Fahrenheit, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(i) the source of the shellstock on display is identified as specified under subsection (c)(9) of this section, the source information is displayed with the shellstock and recorded as specified under paragraph (2) of this subsection; and

(ii) the shellstock are protected from contamination.

(C) Shucked shellfish may be removed from the container in which they were received and held in a display container maintained at or below 41 degrees Fahrenheit from which individual servings are dispensed upon a consumer's request if:

(i) the labeling information for the shellfish on display as specified under subsection (c)(8) of this section is retained and correlated to the date when, or dates during which, the shellfish are sold or served and the information is displayed with the shellfish; and

(ii) the shellfish are protected from contamination.

(2) Shellstock, maintaining identification. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:

(A) using a record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and

(B) if shellstock are removed from their tagged or labeled container, using only one tagged or labeled container at a time and ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container, unless all tag or label information is identical, before being ordered by the consumer. Shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

(3) Disclosure of tag or label information. Tag or label information shall be made available to any consumer upon request.

(e) Preventing contamination by employees.

(1) Preventing contamination from hands.

(A) Food employees shall wash their hands as specified under §229.163(e) of this title (relating to Management and Personnel).

(B) Except when washing fruits and vegetables as specified in subsection (f)(6) of this section, food employees shall avoid contact of exposed ready-to-eat food with their bare hands by use of suitable utensils such as deli tissue, spatulas, tongs, or single-use gloves; or shall wash hands as specified in §229.163(e)(3) of this title.

(C) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(2) Preventing contamination when tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served.

(f) Preventing food and ingredient contamination.

(1) General. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination.

(2) Packaged and unpackaged food - separation, packaging, and segregation.

(A) Food shall be protected from cross contamination by:

(i) separating raw animal foods during storage, preparation, holding, and display from:

(I) raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables; and

(II) cooked ready-to-eat food.

(ii) except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(I) using separate equipment for each type; or

(II) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(III) preparing each type of food at different times or in separate areas.

(iii) cleaning equipment and utensils as specified under §229.165(n)(1) of this title (relating to Equipment, Utensils, and Linens) and sanitizing as specified under §229.165(r) of this title;

(iv) except as specified under subparagraph (B) of this paragraph, storing the food in packages, covered containers, or wrappings;

(v) cleaning hermetically sealed containers of food of visible soil before opening;

(vi) protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(vii) storing damaged, spoiled or recalled food being held in the food establishment as specified under §229.167(n) of this title (relating to Physical Facilities); and

(viii) separating fruits and vegetables, before they are washed as specified under paragraph (6) of this subsection from ready-to-eat food.

(B) Subparagraph (A)(iv) of this paragraph does not apply to:

(i) whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(ii) primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(iii) whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(iv) food being cooled as specified under subsection (n)(5)(B)(ii) of this section; or

(v) shellstock.

(3) Food storage containers, identified with common name of food. Working containers holding food or food ingredients that are removed from their original packages for use in the food establishment such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food except that containers holding food that can be readily and unmistakably recognized such as dry pasta need not be identified.

(4) Pasteurized eggs, substitute for shell eggs for certain recipes and populations. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

(A) foods such as Caesar salad, hollandaise or bear-naise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not:

(i) cooked as specified under subsection (k)(1)(A)(i) or (ii) of this section; or

(ii) included under subsection (k)(1)(C) of this section; and

(B) eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.

(5) Protection from unapproved additives.

(A) Food shall be protected from contamination that may result from the addition of, as specified in subsection (c)(2) of this section:

(i) unsafe or unapproved food or color additives; and

(ii) unsafe or unapproved levels of approved food and color additives.

(B) A food employee may not:

(i) apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₆; or

(ii) serve or sell food specified in clause (i) of this subparagraph that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet this subparagraph.

(6) Washing fruits and vegetables.

(A) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

(B) Fruits and vegetables may be washed by using chemicals as specified under §229.168(f)(2) of this title (relating to Poisonous or Toxic Materials).

(g) Preventing contamination from ice used as a coolant.

(1) Ice used as exterior coolant, prohibited as contamination ingredient. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.

(2) Storage or display of food in contact with water or ice.

(A) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(B) Except as specified in subparagraphs (C) and (D) of this paragraph, unpackaged food may not be stored in direct contact with undrained ice.

(C) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(D) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

(h) Preventing contamination from equipment, utensils, wiping cloths, and linens.

(1) Food contact with equipment and utensils. Food may not contact:

(A) probe-type price or identification tags, unless each tag is cleaned and sanitized prior to each use and used only in raw foods that will not be consumed as a ready-to-eat food; and

(B) surfaces of utensils and equipment that are not cleaned as specified under §229.165(m)-(o) of this title and sanitized as specified in §229.165(p)-(r) of this title.

(2) In-use utensils, between-use storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(A) except as specified under subparagraph (B) of this paragraph, in the food with their handles above the top of the food and the container;

(B) in food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(C) on a clean portion of the food preparation table or cooking equipment and shall be cleaned and sanitized at a frequency specified under §229.165(n)(1) and (q) of this title;

(D) in running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(E) in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

(F) in water that maintains a temperature of at least 60 degrees Celsius (140 degrees Fahrenheit).

(3) Wiping cloths, used for one purpose.

(A) Cloths that are in use for wiping food spills shall be used for no other purpose.

(B) Cloths used for wiping food spills shall be:

(i) dry and used for wiping food spills from tableware and carry-out containers; or

(ii) moist and cleaned as specified under §229.165(t)(4) of this title, stored in a chemical sanitizer as specified under §229.168(f)(1) of this title, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

(C) Dry or moist cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and moist cloths used with raw animal foods shall be kept in a separate sanitizing solution.

(4) Linens and napkins, use limitation. Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

(5) Gloves, use limitation.

(A) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(B) Except as specified in subparagraph (C) of this paragraph, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in these rules, such as frozen food or a primal cut of meat.

(C) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

(D) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in these rules such as frozen food or a primal cut of meat.

(6) Using clean tableware for second portions and refills.

(A) Food employees may not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills except glasses and cups, provided no contact is made between the glasses and cups and the container from which the refills are dispensed.

(B) Except as specified in subparagraph (C) of this paragraph, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment. A card, sign or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas such as salad bars and buffets.

(C) Cups and glasses may be reused by self-service consumers if refilling is a contamination-free process as specified under §229.165(f)(3)(A),(B) and (D) of this title.

(7) Refilling returnables.

(A) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.

(B) Except as specified in subparagraph (C) of this paragraph, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in §229.165(o)(7) of this title.

(C) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified in §229.165(f)(3)(A),(B), and (D) of this title.

(i) Preventing contamination from the premises.

(1) Food Storage.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, food shall be protected from contamination by storing the food:

(i) in a clean, dry location;

(ii) where it is not exposed to splash, dust, or other contamination; and

(iii) at least 15 centimeters (6 inches) above the floor.

(B) Food in packages and working containers may be stored less than 15 centimeters (6 inches) above the floor on case lot handling equipment as specified under §229.165(f)(22) of this title.

(C) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(2) Food storage, prohibited areas. Food may not be stored:

(A) in locker rooms;

(B) in toilet rooms;

(C) in dressing rooms;

(D) in garbage rooms;

(E) in mechanical rooms;

(F) under sewer lines that are not shielded to intercept potential drips;

(G) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(H) under open stairwells; or

(I) under other sources of contamination.

(3) Vended potentially hazardous food, original container. Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared, unless the food was manufactured within the machine.

(4) Food preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

(j) Preventing contamination by consumers.

(1) Food display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.

(2) Condiments, protection.

(A) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(B) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled

at a location that is approved by the regulatory authority, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

(3) Consumer self-service operations, sale from self-service containers.

(A) Unpackaged, raw animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This paragraph does not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish, or to ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue.

(B) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(C) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

(D) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

(i) the self-service container has a tight-fitting lid that is securely attached to the container; and

(ii) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(E) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.

(F) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispensing the food.

(G) The seller shall:

(i) keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and

(ii) post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.

(4) Returned food, reservice or sale.

(A) Except as specified under subparagraph (B) of this paragraph, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

(B) Except as specified in subsection (u) of this section, food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold.

(5) Miscellaneous sources of contamination. Food shall be protected from contamination that may result from a factor or source not specified in subsections (e)-(j) of this section.

(k) Cooking.

(1) Raw animal foods.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, raw animal foods such as eggs, fish, meat, poultry,

and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(i) 63 degrees Celsius (145 degrees Fahrenheit) or above for 15 seconds for:

(I) raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and

(II) except as specified under subparagraph (A)(ii) and (iii) and subparagraph (B) of this paragraph, fish and meat including game animals and exotic animals commercially raised for food under a voluntary inspection program.

(ii) 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds or the temperature specified in the following table that corresponds to the holding time for pork, ratites, and injected meats; the following if they are comminuted: fish, meat, game animals and exotic animals commercially raised for food under a voluntary inspection program; and raw eggs that are not prepared as specified under subparagraph (A)(i)(I) of this paragraph; or
Figure: 25 TAC §229.164(k)(1)(A)(ii)

(iii) 74 degrees Celsius (165 degrees Fahrenheit) or above for 15 seconds for poultry except for ratites, wild game animals and exotic animals which are live caught and are under a routine inspection program, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.

(B) Whole beef roasts and corned beef roasts shall be cooked:

(i) in an oven that is preheated to the temperature specified for the roast's weight that is held at that temperature as specified in the following table:
Figure: 25 TAC §229.164(k)(1)(B)(i)

(ii) and all parts of the food shall be heated to a temperature and for the holding time that corresponds to that temperature in the following table:
Figure: 25 TAC §229.164(k)(1)(B)(ii)

(C) Except for food establishments serving a highly susceptible population, subparagraphs (A) and (B) of this paragraph do not apply if, upon consumer order, the food is a raw animal food such as raw, marinated fish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft cooked eggs that is served or offered for sale in a ready-to-eat form. Consumers should be informed by brochures, deli-case or menu advisories, label statements, table tents, placards, or other effective means, that, to ensure its safety, food should be cooked as specified in this paragraph.

(2) Microwave cooking. Raw animal foods cooked in a microwave oven shall be:

(A) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(B) covered to retain surface moisture;

(C) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food; and

(D) allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

(3) Plant food cooking for hot holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 60 degrees Celsius (140 degrees Fahrenheit).

(1) Freezing.

(1) Parasite destruction. Except as specified in paragraph (2) of this subsection, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated- partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

(A) -20 degrees Celsius (-4 degrees Fahrenheit) or below for 168 hours (7 days) in a freezer; or

(B) -35 degrees Celsius (-31 degrees Fahrenheit) or below for 15 hours in a blast freezer.

(2) Tuna species. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under paragraph (1) of this subsection.

(3) Records, creation and retention.

(A) Except as specified in paragraph (2) of this subsection and subparagraph (B) of this paragraph, if raw, raw-marinated and lightly cooked-marinated fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

(B) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under paragraph (1) of this subsection may substitute for the records specified under subparagraph (A) of this paragraph.

(m) Reheating.

(1) Reheating for hot holding.

(A) Except as specified under subparagraphs (B), (C), and (E) of this paragraph, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) for 15 seconds.

(B) Except as specified under subparagraph (C) of this paragraph, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.

(C) Ready-to-eat food taken from a commercially-processed, hermetically-sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 60 degrees Celsius (140 degrees Fahrenheit) for hot holding.

(D) Reheating for hot holding shall be done rapidly and the minimum temperature specified under subsection (n)(6)(B) or (C) of this section shall be reached within two hours.

(E) Remaining unsliced portions of roasts of beef that are cooked as specified in subsection (k)(1)(B) of this section may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in subsection (k)(1)(B) of this section.

(2) Preparation for immediate service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

(n) Time and temperature control.

(1) Frozen food. Stored frozen foods shall be maintained frozen.

(2) Potentially hazardous food, slacking. Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

(A) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit) or less, or at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified in paragraph (6)(C) of this subsection; or

(B) at any temperature if the food remains frozen.

(3) Thawing. Potentially hazardous food shall be thawed:

(A) under refrigeration that maintains the food temperature at 5 degrees Celsius (41 degrees Fahrenheit), or less; or at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified in paragraph (6)(C) of this subsection;

(B) completely submerged under running water:

(i) at a water temperature of 21 degrees Celsius (70 degrees Fahrenheit) or below;

(ii) with sufficient water velocity to agitate and float off loose particles in an overflow; and

(iii) for a period of time that does not allow thawed portions of ready-to-eat food to rise above 5 degrees Celsius (41 degrees Fahrenheit), or 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection; or

(iv) for a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in subsection (k)(1)(A) or (B) of this section to be above 5 degrees Celsius (41 degrees Fahrenheit) or 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection for more than four hours including the time the food is exposed to the running water and the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to 5 degrees Celsius (41 degrees Fahrenheit) or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection;

(C) as part of a cooking process if the food that is frozen is:

(i) cooked as specified in subsection (k)(1)(A) or (B) or (k)(2) of this section; or

(ii) thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(D) using any procedure that thaws a portion of frozen ready-to-eat food that is prepared for immediate service in response to an individual consumer's order.

(4) Cooling.

(A) Cooked potentially hazardous food shall be cooled:

(i) from 60 degrees Celsius (140 degrees Fahrenheit) to 21 degrees Celsius (70 degrees Fahrenheit) within two hours; and

(ii) from 21 degrees Celsius (70 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit), or below, or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection within four hours.

(B) Potentially hazardous food shall be cooled to 5 degrees Celsius (41 degrees Fahrenheit) or below or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection within four hours if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(C) A potentially hazardous food received in compliance with laws allowing a temperature above 5 degrees Celsius (41 degrees Fahrenheit) during shipment from the supplier shall be cooled to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours or to 7 degrees Celsius (45 degrees Fahrenheit) as specified in paragraph (6)(C) of this subsection within four hours.

(5) Cooling methods.

(A) Cooling shall be accomplished in accordance with the time and temperature criteria specified under paragraph (4) of this subsection by using one or more of the following methods based on the type of food being cooled:

- (i) placing the food in shallow pans;
- (ii) separating the food into smaller or thinner portions;
- (iii) using rapid cooling equipment;
- (iv) stirring the food in a container placed in an ice water bath;
- (v) using containers that facilitate heat transfer;
- (vi) adding ice as an ingredient; or
- (vii) other effective methods.

(B) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

(i) arranged in the equipment to provide maximum heat transfer through the container walls; and

(ii) loosely covered, or uncovered if protected from overhead contamination as specified under subsection (i)(1)(A)(ii) of this section, during the cooling period to facilitate heat transfer from the surface of the food.

(6) Potentially hazardous food, hot and cold holding. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under paragraph (10) of this subsection, potentially hazardous food shall be maintained:

(A) at 60 degrees Celsius (140 degrees Fahrenheit) or above, except that roasts cooked to a temperature and for a time specified in subsection (k)(1)(B) of this section may be held at a temperature of 54 degrees Celsius (130 degrees Fahrenheit); or

(B) at 5 degrees Celsius (41 degrees Fahrenheit) or below, except as specified under subparagraph (C) of this paragraph, paragraphs (7)-(9) of this subsection, and §229.165(f)(11) of this title; or

(C) at 7 degrees Celsius (45 degrees Fahrenheit) provided the mechanical refrigeration unit in which the food is held:

(i) is currently in place and in use in the food establishment; and

(ii) is upgraded or replaced with a refrigeration unit that can meet the requirements of subparagraph (B) of this paragraph within five years of adoption of these rules by the department except that in-use food preparation line equipment is exempt from this requirement for the life of the existing equipment provided that all potentially hazardous food stored in these refrigeration units is clearly marked at the time of preparation or opening to indicate the date, including the day of preparation, by which the food shall be consumed or disposed of within four calendar days or less.

(D) Shell eggs must be held at an ambient temperature of 45 degrees Fahrenheit or less. If the United States Department of Agriculture and the U.S. Food and Drug Administration determine by law that a lower temperature must be maintained, the lower temperature shall prevail.

(7) Prepared on premise ready-to-eat potentially hazardous food, date marking.

(A) Except as specified in paragraph (8)(C) of this subsection, refrigerated, ready-to-eat potentially hazardous food prepared and held refrigerated for more than 24 hours in a food establishment shall be clearly marked at the time of preparation to indicate the date, including the day of preparation, by which the food shall be consumed which shall be:

(i) seven calendar days or less from the day that the food is prepared, if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days or less from the day the food is prepared, if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(B) Except as specified in paragraph (8)(C) of this subsection, a ready-to-eat, potentially hazardous food prepared in a food establishment and subsequently frozen, shall be clearly marked:

(i) when the food is thawed, to indicate that the food shall be consumed within 24 hours; or

(ii) when the food is placed into the freezer, to indicate the length of time before freezing, including the day of preparation, that the food is held refrigerated:

(I) seven calendar days or less from the day of preparation, if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(II) four calendar days or less from the day of preparation, if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(iii) when the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

(I) seven calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less before and after freezing; or

(II) four calendar days or less after the food is removed from the freezer, minus the time before freezing, that the

food is held refrigerated if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection before and after freezing.

(8) Commercially processed ready-to-eat potentially hazardous food, date marking.

(A) Except as specified in subparagraphs (C) and (D) of this paragraph, a container of refrigerated, ready-to-eat potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date, including the day the original container is opened, by which the food shall be consumed which is:

(i) seven calendar days or less after the original container is opened, if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days or less from the day the original container is opened, if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(B) Except as specified in subparagraphs (C) and (D) of this paragraph, a container of refrigerated, ready-to-eat potentially hazardous food prepared and packaged by a food processing plant and subsequently opened and frozen in a food establishment shall be clearly marked:

(i) when the food is thawed, to indicate that the food shall be consumed within 24 hours; or

(ii) to indicate the time between the opening of the original container and freezing that the food is held refrigerated and which is, including the day of opening the original container:

(I) seven calendar days or less, after opening the original container if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(II) four calendar days or less after opening the original container if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection; and

(iii) when the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

(I) seven calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less before and after freezing; or

(II) four calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection before and after freezing.

(C) Paragraphs (7)(A) and (B) and (8)(A) and (B) of this subsection do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(D) Paragraph (8)(A) and (B) of this subsection do not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

(9) Ready-to-eat potentially hazardous food, disposition.

(A) A food specified in paragraph (7)(A) of this subsection shall be discarded if not consumed within:

(i) seven calendar days from the date of preparation if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days from the date of preparation if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(B) A food specified under paragraphs (7)(B)(i) or (8)(B)(i) of this subsection shall be discarded if not consumed within 24 hours after thawing.

(C) A food specified under paragraphs (7)(B)(ii) and (iii) or (8)(B)(ii) and (iii) of this subsection shall be discarded on or before the most recent date marked on the food container or package if the food is not consumed by that date.

(D) A food specified under paragraph (8)(A) of this subsection shall be discarded if not consumed within, including the day of opening the original container:

(i) seven calendar days after the date that the original package is opened in a food establishment if the food is maintained at 5 degrees Celsius (41 degrees Fahrenheit) or less; or

(ii) four calendar days after the date that the original package is opened in a food establishment if the food is maintained at 7 degrees Celsius (45 degrees Fahrenheit) or less as specified under paragraph (6)(C) of this subsection.

(E) A food specified under paragraphs (7)(A) or (B) and (8)(A) or (B) of this subsection shall be discarded if the food is:

(i) marked with the date specified under paragraphs (7)(A) or (B) or (8)(A) or (B) of this subsection and the food is not consumed before the most recent date expires;

(ii) in a container or package which does not bear a date or time; or

(iii) inappropriately marked with a date or time that exceeds the date or time specified under paragraphs (7)(A) or (B) or (8)(A) or (B) of this subsection.

(F) Refrigerated, ready-to-eat potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

(i) 5 degrees Celsius (41 degrees Fahrenheit) shall be discarded if not sold within seven days; or

(ii) 7 degrees Celsius (45 degrees Fahrenheit) shall be discarded if not sold within four days.

(10) Time as a public health control. If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

(A) the food shall be marked, labeled, tagged, or otherwise unmistakably identified to indicate the time which is four hours past the point when the food was removed from temperature control;

(B) the food shall be cooked and served, served if a ready-to-eat food, or discarded within four hours of the time at which the food was removed from temperature control;

(C) the food in unmarked containers or packages or marked to exceed a four hour limit shall be discarded; and

(D) written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance with:

(i) subparagraphs (A)-(C) of this paragraph; and

(ii) paragraph (4) of this subsection for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(o) Specialized processing methods.

(1) Variance requirement for specialized processes. A food establishment shall obtain a variance as specified in §229.171(c)(1) and (2) of this title (relating to Compliance and Enforcement) before smoking or curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food nonpotentially hazardous; using a reduced oxygen method of packaging food except as specified in paragraph (2) of this subsection where a barrier to *Clostridium botulinum* in addition to refrigeration exists; or preparing food by another method that is determined by the regulatory authority to require a variance.

(2) Reduced oxygen packaging, criteria.

(A) A food establishment that packages food using a reduced oxygen packaging method shall have a HACCP Plan that contains the information specified under §229.171(d)(2)(D) of this title and that:

(i) identifies the food to be packaged;

(ii) limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

(I) has a water activity (a_w) of 0.91 or less;

(II) has a hydrogen ion concentration (pH) of 4.6 or less;

(III) is a meat or poultry product cured at a food processing plant regulated by the U.S. Department of Agriculture or the department, and is received in an intact package; or

(IV) is a food with a high level of competing organisms such as raw meat or raw poultry;

(iii) specifies methods for maintaining food at 5 degrees Celsius (41 degrees Fahrenheit) or below; and

(iv) describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(I) maintain the food at 5 degrees Celsius (41 degrees Fahrenheit) or below; and

(II) discard the food if within 14 calendar days of its packaging if it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption.

(v) limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(vi) includes operational procedures that:

(I) require employees contacting foods with bare hands to wash hands properly or utilize proper utensils;

(II) identify a designated area and the method by which physical barriers or methods of separation of raw foods

and ready-to-eat foods minimize cross contamination, and access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation;

(III) delineate cleaning and sanitization procedures for food-contact surfaces; and

(vii) describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(I) concepts required for a safe operation;

(II) equipment and facilities; and

(III) procedures specified in paragraph (2)(A)(vi) of this subsection and §229.171(d)(2)(D) of this title.

(B) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method. Some foods, such as hard cheeses, may not require a HACCP plan.

(p) Food identity and accurate representation.

(1) Standards of identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and Standards of Identity or Composition, 9 CFR 381.156-381.171, 381.173 and 381.174 Standards of Identity for Poultry and Poultry Products, and the general requirements in 21 CFR 130 Food Standards: General, and 9 CFR 319 Subpart A General.

(2) Honestly presented.

(A) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(B) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of food.

(q) Labeling.

(1) Food labels.

(A) Food packaged in a food establishment shall be labeled according to law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers. Label information shall include:

(i) the common name of the food, or absent a common name, an adequately descriptive identity statement;

(ii) if made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(iii) an accurate declaration of the quantity of contents;

(iv) the name and place of business of the manufacturer, packer, or distributor; and

(v) except as exempted in the Federal Food, Drug, and Cosmetic Act §403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B - Nutrition Labeling.

(B) Except as specified in paragraph (2)(C) of this subsection, food that is not packaged need not be labeled unless a health or nutrient content claim is made.

(2) Other forms of information.

(A) Consumer information, such as nutritional information, and consumer warnings if required by law, shall be provided.

(B) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

(C) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(i) the manufacturer's or processor's label that was provided with the food; or

(ii) a card, sign, or other method of notification that includes:

(I) the common name of the food;

(II) a list of ingredients in order of predominance;

(III) a declaration of artificial color or flavor and chemical preservatives, if contained in the food; and

(IV) nutrition labeling if specified in 21 CFR 101 Food Labeling.

(D) Bulk, unpackaged foods which are apportioned to consumers with the assistance of food establishment personnel, including bakery products, need not be labeled if:

(i) a health, nutrient content claim, or other claim is not made;

(ii) the food is manufactured or prepared on the premises of the food establishment or a food processing plant that is owned by the same person and is licensed by the food regulatory agency that has primary jurisdiction; and

(iii) ingredients contained in the food, including potential allergens, are provided to the consumer on request from a recipe book or by other means.

(3) Menu claims.

(A) If a nutrient content claim or health claim is made, such claims shall conform to the definitions of such terms found in 21 Code of Federal Regulations Part 101.

(B) Claims must be capable of being substantiated. Substantiation may be based upon a recipe for the food, or a database developed and tested nationally and acceptable to the regulatory authority. Evidence of substantiation must be supplied to the regulatory authority upon request.

(C) Nutritional information must be made available to the consumer upon request for any food for which a nutrient content claim or health claim is made.

(r) Consumer advisory. Food establishments which deliver shellfish to a consumer for raw consumption shall inform consumers by brochures, deli-case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such shellfish in raw or undercooked form. The language in the advisory shall be as follows unless otherwise approved by the Retail Foods Division in the department in response to a written request from the food establishment: **THERE IS A RISK ASSOCIATED WITH CONSUMING RAW OYSTERS OR ANY RAW ANIMAL PROTEIN. IF YOU HAVE CHRONIC ILLNESS OF THE LIVER, STOMACH, OR BLOOD, OR HAVE IMMUNE DISORDERS, YOU**

ARE AT GREATEST RISK OF ILLNESS FROM RAW OYSTERS AND SHOULD EAT OYSTERS FULLY COOKED. IF UNSURE OF YOUR RISK, CONSULT YOUR PHYSICIAN.

(s) Disposition, contaminated food.

(1) Unsafe, adulterated, or not honestly presented food. A food that is unsafe, adulterated, or not honestly presented as specified in subsection (a) of this section shall be reconditioned according to a procedure approved by the regulatory authority or discarded. It shall be the responsibility of the owner of the product to present a reconditioning plan to the regulatory authority for review. If, after review of the plan, the regulatory authority determines that the reconditioned product will be safe, unadulterated, and not misrepresented, the regulatory authority shall approve the reconditioning plan.

(2) Food from unapproved source. Food that is not from an approved source as specified in subsection (b)(1)-(7) of this section is subject to detention by the regulatory authority or shall be discarded.

(3) Contaminated ready-to-eat food. Ready-to-eat food that may have become contaminated by an employee who has been restricted or excluded as specified in §229.163(d)(2) of this title shall be discarded.

(4) Food contaminated by personal contact. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

(t) Donation of foods.

(1) Previous service. Foods which have been previously served to a consumer may not be donated.

(2) Potentially hazardous foods. A potentially hazardous food may be donated if:

(A) the food has been kept at or above 60 degrees Celsius (140 degrees Fahrenheit) during hot holding and service, and subsequently refrigerated to meet the time and temperature requirements under subsection (n)(4) and (5) of this section;

(B) the donor can substantiate that the food recipient has the facilities to meet the transportation, storage, and reheating requirements of these rules;

(C) the temperature of the food is at or below 5 degrees Celsius (41 degrees Fahrenheit) at the time of donation, and is protected from contamination; and

(D) if the food is to be transported by the recipient directly to a consumer, the recipient need meet only the transportation requirements, including holding temperatures, under these rules.

(3) Labeling. Donated foods shall be labeled with the name of the food, the source of the food, and the date of preparation.

(4) Shelf life. Donated potentially hazardous foods may not exceed the shelf life for leftover foods outlined in these rules.

(5) Damaged foods. Heavily rim or seam-dented canned foods, or packaged foods without the manufacturer's complete labeling, shall not be donated.

(6) Distressed foods. Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation, other environmental contamination, or prolonged storage shall not be directly donated for consumption by the consumer. Such foods may be sold or donated to a licensed

food salvage establishment if permitted under the provisions of the Health and Safety Code, Chapter 432.

(u) Additional safeguards, requirements for food establishments serving highly susceptible populations.

(1) Apple juice beverages. Apple juice, apple cider, and other beverages containing apple juice served to a highly susceptible population shall be obtained pasteurized, or in a commercially sterile shelf-stable form in a hermetically sealed container.

(2) Pasteurized eggs, egg products. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

(A) foods such as caesar salad, hollandaise or bernaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified beverages; and

(B) eggs that are broken, combined in a container, and not cooked immediately or eggs that are held before service following cooking.

(3) Food in unopened original packages. Food in an unopened original package may not be re-served.

(4) Raw animal foods. Raw animal food such as raw or raw-marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft-cooked eggs may not be served or offered for sale in a ready-to-eat form.

§229.165. *Equipment, Utensils, and Linens.*

(a) Multiuse materials.

(1) Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

(A) safe;

(B) durable, corrosion-resistant, and nonabsorbent;

(C) sufficient in weight and thickness to withstand repeated warewashing;

(D) finished to have a smooth, easily cleanable surface;

and

(E) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

(2) Cast iron, use limitation.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, cast iron may not be used for utensils or food-contact surfaces of equipment.

(B) Cast iron may be used as a surface for cooking.

(C) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(3) Lead in ceramic, china, and crystal utensils, use limitation. Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits shown in the following table:
Figure: 25 TAC §229.165(a)(3)

(4) Copper, use limitation.

(A) Except as specified in subparagraph (B) of this paragraph, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(B) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(5) Galvanized metal, use limitation. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

(6) Sponges, use limitation. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(7) Lead in pewter alloys, use limitation. Pewter alloys containing lead in excess of 0.05% may not be used as a food contact surface.

(8) Lead in solder and flux, use limitation. Solder and flux containing lead in excess of 0.2% may not be used as a food contact surface.

(9) Wood, use limitation.

(A) Except as specified in subparagraphs (B)- (E) of this paragraph, wood and wood wicker may not be used as a food-contact surface.

(B) Hard maple or an equivalently hard, close-grained wood may be used for:

(i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees Celsius (230 degrees Fahrenheit) or above.

(C) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(D) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(i) untreated wood containers; or

(ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800, Preservatives for wood.

(E) Wooden wicker baskets used for the proofing of bread can be used provided the product is fully baked after proofing in these baskets.

(10) Nonstick coatings, use limitation. Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(11) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

(b) Single-service and single-use, characteristics. Materials that are used to make single-service and single-use articles:

(1) may not:

(A) allow the migration of deleterious substances; or

(B) impart colors, odors, or tastes to food; and

(2) shall be:

(A) safe; and

(B) clean.

(c) Durability and strength.

(1) Equipment and utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(2) Food temperature measuring devices. Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

(d) Cleanability.

(1) Food-contact surfaces. Multi use food-contact surfaces shall be:

(A) smooth;

(B) free of breaks, open seams, cracks, chips, pits, and similar imperfections;

(C) free of sharp internal angles, corners, and crevices;

(D) finished to have smooth welds and joints; and

(E) accessible for cleaning and inspection by one of the following methods:

(i) without being disassembled;

(ii) by disassembling without the use of tools; or

(iii) by easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as mallets, screwdrivers, pliers, or wrenches that are kept near the equipment and are accessible for use.

(2) Cleaned in place (CIP) equipment.

(A) CIP equipment shall meet the characteristics specified under paragraph (1) of this subsection and shall be designed and constructed so that:

(i) cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and

(ii) the system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.

(B) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

(3) "V" threads, use limitation. "V" type threads may not be used on food-contact surfaces. This paragraph does not apply to hot oil cooking or filtering equipment.

(4) Hot oil filtering equipment. Hot oil filtering equipment shall meet the characteristics specified under paragraphs (1) or

(2) of this subsection and shall be readily accessible for filter replacement and cleaning of the filter.

(5) Can openers. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

(6) Nonfood-contact surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(7) Kick plates, removable. Kick plates, if used, shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(A) removable by one of the methods specified in paragraph (1)(E) of this subsection or capable of being rotated open; and

(B) removable or capable of being rotated open without unlocking equipment doors.

(8) Ventilation hood systems, filters. Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(e) Accuracy of temperature measuring devices.

(1) Temperature measuring device, food.

(A) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus 1 degrees Celsius (1.8 degrees Fahrenheit) in the intended range of use.

(B) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus 2 degrees Fahrenheit in the intended range of use.

(2) Temperature measuring device, ambient air and water.

(A) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus 1.5 degrees Celsius (2.7 degrees Fahrenheit) in the intended range of use.

(B) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus 3 degrees Fahrenheit in the intended range of use.

(3) Pressure measuring devices, mechanical warewashing equipment. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pound per square inch) or smaller and shall be accurate to plus or minus 14 kilopascals (plus or minus 2 pounds per square inch) in the 100-170 kilopascals (15-25 pounds per square inch) range.

(f) Functionality of equipment.

(1) Ventilation hood systems, drip prevention. Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(2) Equipment openings, closures and deflectors.

(A) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(B) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).

(C) Except as specified under subparagraph (D) of this paragraph, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(D) If a watertight joint is not provided:

(i) the piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from food openings; and

(ii) the opening shall be flanged as specified under subparagraph (B) of this paragraph.

(3) Dispensing equipment, protection of equipment and food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

(A) the delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(B) the delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(C) the delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(i) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(ii) available for self-service during hours when it is not under the full-time supervision of a food employee; and

(D) the dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(4) Vending machine, vending stage closure. The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

(A) located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(B) available for self-service during hours when it is not under the full-time supervision of a food employee.

(5) Bearings and gear boxes, leakproof. Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

(6) Beverage tubing, separation. Beverage tubing and cold-plate beverage cooling devices may not be installed in contact

with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

(7) Ice units, separation of drains. Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(8) Condenser unit, separation. If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

(9) Can openers on vending machines. Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

(10) Molluscan shellfish tanks.

(A) Except as specified under subparagraph (B) of this paragraph, molluscan shellfish life-support system display tanks may only be used to display shellfish that are not offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(B) Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a Hazard Analysis Critical Control Point (HACCP) Plan that:

(i) is submitted by the permit holder and approved by the regulatory authority as specified under §229.171(c) of this title (relating to Compliance and Enforcement); and

(ii) ensures that:

(I) water used with fish other than molluscan shellfish does not flow into the molluscan tank;

(II) the safety and quality of the shellfish as they were received are not compromised by use of the tank; and

(III) the identity of the source of the shellstock is retained as specified under §229.164(d)(2) of this title (relating to Food), and the source information is displayed with the shellstock as required in §229.164(c)(9) of this title.

(11) Vending machines, automatic shutoff.

(A) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

(i) if there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under §229.164 of this title; and

(ii) if a condition specified in clause (i) of this subparagraph occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under §229.164 of this title.

(B) The temperature specified for activation of the automatic shutoff within a machine vending potentially hazardous food may deviate from the temperature and for a time as follows:

(i) in a refrigerated vending machine, at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or more, for no more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

(ii) in a hot holding vending machine, at an ambient temperature of less than 60 degrees Celsius (140 degrees Fahrenheit), for no more than 120 minutes after the machine is filled, serviced, or restocked.

(12) Temperature measuring devices.

(A) In a mechanically-refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a mechanically-refrigerated unit and in the coolest part of a hot food storage unit.

(B) Except as specified in subparagraph (C) of this paragraph, cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(C) Subparagraph (B) of this paragraph does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calorimeters, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

(D) Temperature measuring devices shall be designed to be easily readable.

(E) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1 degree Celsius or 2 degrees Fahrenheit in the intended range of use.

(13) Warewashing machine, data plate operating specifications. A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(A) temperatures required for washing, rinsing, and sanitizing;

(B) pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

(C) conveyor speed for conveyor machines or cycle time for stationary rack machines.

(14) Warewashing machines, internal baffles. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross-contamination of the solutions in wash and rinse tanks.

(15) Warewashing machines, temperature measuring devices. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water in each wash and rinse tank, and as the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

(16) Manual warewashing equipment, heaters and baskets. If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(A) designed with an integral heating device that is capable of maintaining water at a temperature not less than 77 degrees Celsius (171 degrees Fahrenheit); and

(B) provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(17) Warewashing machines, sanitizer level indicator. A warewashing machine that uses a chemical for sanitization and that is installed after adoption of these rules shall be equipped with a device

that indicates audibly or visually when more chemical sanitizer needs to be added.

(18) Warewashing machines, flow pressure device.

(A) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

(B) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.

(C) Subparagraphs (A) and (B) of this paragraph do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(19) Warewashing sinks and drain boards, self-draining. Sinks and drain boards of warewashing sinks and machines shall be self-draining.

(20) Equipment compartments, drainage. Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

(21) Vending machines, liquid waste products.

(A) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(B) Vending machines that dispense liquid food in bulk shall be:

(i) provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(ii) equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(C) Shutoff devices specified in subparagraph (B)(ii) of this paragraph shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(22) Case lot handling equipment, moveability. Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or over wrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

(23) Vending machine doors and openings.

(A) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

(i) being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters

or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this section;

(ii) being effectively gasketed;

(iii) having interface surfaces that are at least 13 millimeters or one-half inch wide; or

(iv) jambs or surfaces used to form an L-shaped entry path to the interface.

(B) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

(24) Food equipment certification, classification, acceptability. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with subsections (a)-(f) of this section.

(g) Equipment, numbers and capacities.

(1) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under §229.164 of this title.

(2) Manual warewashing, sink compartment requirements.

(A) Except as specified in subparagraph (C) of this paragraph, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(B) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subparagraph (C) of this paragraph shall be used.

(C) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of the alternative equipment. Alternative manual warewashing equipment may include:

(i) high-pressure detergent sprayers;

(ii) low- or line-pressure spray detergent foamers;

(iii) other task-specific cleaning equipment;

(iv) brushes or other implements;

(v) two-compartment sinks as specified under subparagraph (D) and (E) of this paragraph; or

(vi) receptacles that substitute for the compartments of a multi compartment sink.

(D) Before a two-compartment sink is used:

(i) it must be approved by the regulatory authority; and

(ii) the nature of warewashing shall be limited to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift and:

(I) a limited number of items shall be cleaned;

(II) the cleaning and sanitizing solutions shall be made up immediately before use and drained immediately after use;

(III) a detergent-sanitizer shall be used to sanitize and shall be applied as specified under subsection (k)(15) of this section; or

(IV) a hot water sanitization immersion step shall be used as specified under subsection (o)(6)(C) of this section.

(E) A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

(3) Drain boards. Drain boards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

(4) Ventilation hood systems, adequacy. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(5) Clothes washers and dryers.

(A) Except as specified in subparagraph (B) of this paragraph, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(B) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under subsection (v)(2) of this section, a mechanical clothes washer and dryer need not be provided.

(h) Utensils, temperature measuring devices, and testing devices.

(1) Utensils, consumer self-service. A food dispensing utensil shall be available for each display container displayed at a consumer self-service unit such as a buffet or salad bar.

(2) Food temperature measuring devices. Food temperature measuring devices shall be provided where required and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under §229.164 of this title.

(3) Temperature measuring devices, manual warewashing. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

(4) Sanitizing solutions, testing devices. A test kit or other device that accurately measures the concentration in milligrams per liter (mg/L) of sanitizing solutions shall be provided and readily available for use.

(i) Location of equipment, clothes washers and dryers, and storage cabinets.

(1) Location requirements. Except as specified in paragraph (2) of this subsection, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

(A) in locker rooms;

(B) in toilet rooms;

(C) in garbage rooms;

(D) in mechanical rooms;

(E) under sewer lines that are not shielded to intercept potential drips;

(F) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(G) under open stairwells; or

(H) under other sources of contamination.

(2) Linen, single-service, single-use item exception. A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(3) Clothes washer and dryer location requirements. If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(j) Installation, fixed equipment.

(1) Fixed equipment, spacing or sealing.

(A) A unit of equipment that is fixed because it is not easily movable shall be installed so that it is:

(i) spaced to allow access for cleaning along the sides, behind, and above the unit;

(ii) spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or

(iii) sealed to adjoining equipment or walls, if the unit is exposed to spillage or seepage.

(B) Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(i) sealed to the table; or

(ii) elevated on legs as specified under paragraph (2)(D) of this subsection.

(2) Fixed equipment, elevation or sealing.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the equipment.

(B) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(C) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(D) Except as specified in subparagraph (E) of this paragraph, table-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.

(E) The clearance space between the table and table-mounted equipment may be:

(i) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

(ii) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

(k) Equipment, maintenance and operation.

(1) Good repair and proper adjustment.

(A) Equipment shall be maintained in a state of repair and condition that meets the requirements specified in subsections (a) and (b).

(B) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturers' specifications.

(C) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

(2) Cutting surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

(3) Microwave ovens. Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10, Microwave Ovens.

(4) Warewashing equipment, cleaning frequency. A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drain boards or other equipment used to substitute for drain boards as specified in subsection (g)(3) of this section shall be cleaned:

(A) before use;

(B) throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

(C) if used, at least every 24 hours.

(5) Warewashing machines, manufacturers' operating instructions.

(A) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(B) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(6) Warewashing sinks, use limitation.

(A) A warewashing sink may not be used for hand-washing or dumping mop water.

(B) A warewashing sink may be used to wash wiping cloths, wash produce, or thaw food if the sink is cleaned as specified under paragraph (4) of this subsection before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under subsections (p)-(r) of this section before and after using the sink to wash produce or thaw food.

(7) Warewashing equipment, cleaning agents. The wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in subsection (g)(2)(C) of this section, shall, when used for warewashing, contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner,

degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

(8) Warewashing equipment, clean solutions. The wash, rinse, and sanitize solutions shall be maintained clean.

(9) Manual warewashing equipment, wash solution temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43 degrees Celsius (110 degrees Fahrenheit) unless a different temperature is specified on the cleaning agent manufacturer's label instructions.

(10) Mechanical warewashing equipment, wash solution temperature.

(A) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

(i) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit);

(ii) for a single tank, conveyor, dual temperature machine, 71 degrees Celsius (160 degrees Fahrenheit);

(iii) for a stationary rack, dual temperature machine, 66 degrees Celsius (150 degrees Fahrenheit); or

(iv) for a multitank, conveyor, multi temperature machine, 66 degrees Celsius (150 degrees Fahrenheit).

(B) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49 degrees Celsius (120 degrees Fahrenheit).

(11) Manual warewashing equipment, hot water sanitization temperatures. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77 degrees Celsius (171 degrees Fahrenheit) or above.

(12) Mechanical warewashing equipment, hot water sanitization temperatures.

(A) Except as specified in subparagraph (B) of this paragraph, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90 degrees Celsius (194 degrees Fahrenheit), or less than:

(i) for a stationary rack, single temperature machine, 74 degrees Celsius (165 degrees Fahrenheit); or

(ii) for all other machines, 82 degrees Celsius (180 degrees Fahrenheit).

(B) The maximum temperature specified under subparagraph (A) of this paragraph does not apply to the high pressure and temperature systems with wand-type, hand-held spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(13) Mechanical warewashing equipment, sanitization pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

(14) Manual and mechanical warewashing equipment, chemical sanitization - temperature, water activity (pH), concentration, and hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in subsection (r)(3) of this section shall be listed in 21 CFR 178.1010, Sanitizing Solutions, shall be used in accordance with the U.S. En-

Environmental Protection Agency (EPA)-approved manufacturer's label use instructions, and shall be used as follows:

(A) a chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following table:

Figure: 25 TAC §229.165(k)(14)(A)

(B) an iodine solution shall have a:

(i) minimum temperature of 24 degrees Celsius (75 degrees Fahrenheit);

(ii) pH of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher pH limit of effectiveness; and

(iii) concentration between 12.5 mg/L and 25 mg/L.

(C) a quaternary ammonium compound solution shall:

(i) have a minimum temperature of 24 degrees Celsius (75 degrees Fahrenheit);

(ii) have a concentration as specified under §229.168(f)(1) of this title (relating to Poisonous or Toxic Materials) and as indicated by the manufacturer's use directions included in the labeling; and

(iii) be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label.

(D) other solutions of the chemicals specified in subparagraphs (A)-(C) of this paragraph may be used if it can be demonstrated that sanitization is achieved and they are approved by the regulatory authority; or

(E) other chemical sanitizers may be used if approved by the regulatory authority and applied in accordance with the manufacturer's use directions included in the labeling.

(15) Manual warewashing equipment, chemical sanitization using detergent-sanitizers. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

(16) Warewashing equipment, determining chemical sanitizer concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

(l) Utensils and temperature measuring devices.

(1) Good repair and proper calibration.

(A) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in subsections (a)-(f) of this section or shall be discarded.

(B) Temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(C) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the indicated range of use.

(2) Single-service and single-use articles, required use. A food establishment without facilities specified in subsections (m)-(r) of this section for cleaning and sanitizing kitchenware and tableware

shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by the consumer.

(3) Single-service and single-use articles, bulk milk dispensing tubes, reuse limitation.

(A) Single-service and single-use articles may not be reused.

(B) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

(4) Shells, use limitation. Mollusk and crustacea shells may not be used more than once as serving containers. If the shell is not the original shell from which the mollusk or crustacea was harvested, the shell must be sanitized prior to use to preclude contamination of other foods. Shells specifically purchased for use as serving containers, which contain any evidence of filth or debris, are prohibited from use.

(m) Cleaning of equipment and utensils.

(1) Equipment, food-contact surfaces, and utensils.

(A) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(B) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(2) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(n) Frequency of cleaning.

(1) Equipment food-contact surfaces and utensils.

(A) Equipment food-contact surfaces and utensils shall be cleaned:

(i) except as specified in subparagraph (B) of this paragraph, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;

(ii) each time there is a change from working with raw foods to working with ready-to-eat foods;

(iii) between uses with raw fruits or vegetables and with potentially hazardous food;

(iv) before using or storing a food temperature measuring device; and

(v) at any time during the operation when contamination may have occurred.

(B) Subparagraph (A)(i) of this paragraph does not apply if raw animal foods that require cooking temperatures specified under §229.164(k)(1)(A)(iii) of this title are prepared after foods that require cooking temperatures specified under §229.164(k)(1)(A)(i) and (ii) and (B) of this title.

(C) Except as specified in subparagraph (D) of this paragraph, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

(D) Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:

(i) in storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under §229.164 of this title and the containers are cleaned when they are empty;

(ii) utensils and equipment are used to prepare food in a refrigerated room maintained at 10 degrees Celsius (50 degrees Fahrenheit) or less, and food under preparation is maintained according to the times and at temperatures specified under §229.164 of this title, and the utensils and equipment are cleaned at least every 12 hours;

(iii) containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under §229.164 of this title, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

(iv) temperature measuring devices are maintained in contact with foods, such as when left in a container of deli food or in a roast, held at temperatures specified under §229.164 of this title;

(v) equipment is used for storage of packaged or unpackaged foods such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; or

(vi) the regulatory authority approves the cleaning schedule based on consideration of:

(I) characteristics of the equipment and its use;

(II) the type of food involved;

(III) the amount of food residue accumulation;

and

(IV) the temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.

(E) Except when dry cleaning methods are used as specified under subsection (o)(1) of this section, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:

(i) at any time when contamination may have occurred;

(ii) at least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(iii) before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; or

(iv) equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(I) at a frequency specified by the manufacturer;

or

(II) absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

(2) Cooking and baking equipment.

(A) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does

not apply to hot oil cooking and filtering equipment if it is cleaned as specified under paragraph (1)(D)(vi) of this subsection.

(B) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(3) Nonfood-contact surfaces. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(o) Methods of cleaning.

(1) Dry cleaning.

(A) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

(B) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(2) Precleaning.

(A) Food debris on equipment and utensils shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(B) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(3) Loading of soiled items, warewashing machines. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that exposes the items to the unobstructed spray from all cycles and allows the items to drain.

(4) Wet cleaning.

(A) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(B) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

(5) Washing, procedures for alternative manual warewashing equipment. If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in subsection (g)(2)(C) of this section in accordance with the following procedures:

(A) equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;

(B) equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and

(C) equipment and utensils shall be washed as specified under paragraph (4)(A) of this subsection.

(6) Rinsing procedures. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(A) use of a distinct, separate water rinse after washing and before sanitizing if using;

(i) a three-compartment sink;

(ii) alternative manual warewashing equipment equivalent to a three-compartment sink as specified under subsection (g)(2)(C) of this section; or

(iii) a three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment.

(B) use of a detergent-sanitizer as specified under subsection (k)(15) of this section if using:

(i) alternative warewashing equipment as specified under subsection (g)(2)(C) of this section that is approved for use with a detergent-sanitizer; or

(ii) a warewashing system for CIP equipment.

(C) use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;

(D) if using a warewashing machine that does not recycle the sanitizing solution as specified in subparagraph (E) of this paragraph, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse:

(i) that is integrated in the application of the sanitizing solution; and

(ii) washed immediately after each application; or

(E) if using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

(7) Returnables, cleaning for refilling.

(A) Except as specified in subparagraphs (B) and (C) of this paragraph, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.

(B) A food-specific container for beverages may be refilled at a food establishment if:

(i) only a beverage that is not a potentially hazardous food is used as specified under §229.164(h)(7)(A) of this title;

(ii) the design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(iii) facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(iv) the consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(v) the container is refilled by:

(I) an employee of the food establishment; or

(II) the owner of the container if the beverage system includes a contamination-free transfer process that can not be bypassed by the container owner.

(C) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

(p) Sanitization, food-contact surfaces and utensils. Equipment food-contact surfaces and utensils shall be sanitized.

(q) Sanitization frequency, before use after cleaning. Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

(r) Sanitization methods, hot water and chemical. After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(1) hot water manual operations by immersion for at least 30 seconds as specified under subsection (k)(11) of this section;

(2) hot water mechanical operations by being cycled through equipment that is set up as specified under subsection (k)(5), (12) and (13) of this section and achieving a utensil surface temperature of 71 degrees Celsius (160 degrees Fahrenheit) as measured by an irreversible registering temperature indicator;

(3) chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under subsection (k)(14) of this section by providing:

(A) except as specified in subparagraph (B) of this paragraph, an exposure time of at least 10 seconds for a chlorine solution as specified in subsection (k)(14)(A) of this section;

(B) an exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38 degrees Celsius (100 degrees Fahrenheit) or a pH of 8 or less and a temperature of at least 24 degrees Celsius (75 degrees Fahrenheit);

(C) an exposure time of at least 30 seconds for other chemical sanitizer solutions; or

(D) an exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in §229.162 of this title (relating to Definitions).

(s) Laundering, clean linens. Clean linens shall be free from food residues and other soiling matter.

(t) Laundering, frequency.

(1) Linens. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(2) Cloth gloves. Cloth gloves as specified in §229.164(h)(5)(D) of this title shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

(3) Certain linens. Linens that are used as specified in §229.164(h)(4) of this title and cloth napkins shall be laundered between each use.

(4) Wet wiping cloths. Wet wiping cloths shall be laundered daily and clean cloths shall be used with a fresh solution of cleanser or sanitizer.

(5) Dry wiping cloths. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

(u) Laundering, methods.

(1) Storage of soiled linens. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(2) Mechanical washing.

(A) Except as specified in subparagraph (B) of this paragraph, linens shall be mechanically washed.

(B) In food establishments in which only wiping cloths are laundered as specified in subsection (g)(5)(B) of this section, the wiping cloths may be laundered in a mechanical washer, a sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under subsection (k)(4) of this section.

(3) Use of laundry facilities.

(A) Except as specified in subparagraph (B) of this paragraph, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(B) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

(v) Drying, equipment and utensils.

(1) Equipment and utensils, air-drying required. After cleaning and sanitizing, equipment and utensils:

(A) shall be air-dried or used after adequate draining as specified in paragraph (a) of 21 CFR 178.1010, Sanitizing Solutions, before contact with food; and

(B) may be polished, after air-drying, with cloths that are maintained clean and dry, provided the cloths are used for no other purpose.

(2) Wiping cloths, air-drying locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in subsection (g)(5)(B) of this section shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under subsection (k)(14) of this section.

(w) Lubricating and reassembling of food-contact surfaces, equipment.

(1) Food-contact surfaces. Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

(2) Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.

(x) Storage.

(1) Equipment, utensils, linens, and single-service and single-use articles.

(A) Except as specified in subparagraph (D) of this paragraph, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(i) in a clean, dry location;

(ii) where they are not exposed to splash, dust, or other contamination; and

(iii) at least 15 centimeters (6 inches) above the floor.

(B) Clean equipment and utensils shall be stored as specified under subparagraph (A) of this paragraph and shall be stored:

(i) in a self-draining position that permits air-drying; and

(ii) covered or inverted.

(C) Single-service and single-use articles shall be stored as specified under subparagraph (A) of this paragraph and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) Items that are kept in closed packages may be stored less than 15 centimeters (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as provided under subsection (f)(21) of this section.

(2) Storage prohibitions.

(A) Except as specified in subparagraph (B) of this paragraph, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

(i) in locker rooms;

(ii) in toilet rooms;

(iii) in garbage rooms;

(iv) in mechanical rooms;

(v) under sewer lines that are not shielded to intercept potential drips;

(vi) under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(vii) under open stairwells; or

(viii) under other sources of contamination.

(B) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

(y) Handling of utensils, single-service articles.

(1) Kitchenware and tableware.

(A) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(C) Except as specified under subparagraph (B) of this paragraph, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

(2) Soiled and clean tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(3) Preset tableware. If tableware is preset:

(A) it shall be protected from contamination by being wrapped, covered, or inverted;

(B) exposed and unused settings shall be removed when a consumer is seated; or

(C) exposed, unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

§229.168. *Poisonous or Toxic Materials.*

(a) Original containers, identifying information, prominence. Containers of poisonous toxic materials and personal care items shall bear a legible manufacturer's label.

(b) Working containers, common name. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

(c) Storage, separation. Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) separating the poisonous or toxic materials by spacing or partitioning; and

(2) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(d) Presence and use.

(1) Restriction.

(A) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.

(B) Subparagraph (A) of this paragraph does not apply to packaged poisonous or toxic materials that are for retail sale.

(2) Conditions of use. Poisonous or toxic materials shall be:

(A) used according to:

(i) law and these rules;

(ii) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;

(iii) the conditions of certification, if certification is required, for use of the pest control materials; and

(iv) additional conditions that may be established by the regulatory authority; and

(B) applied so that:

(i) a hazard to employees or other persons is not constituted; and

(ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:

(I) removing the items;

(II) covering the items with impermeable covers;

(III) taking other appropriate preventive actions; and

(IV) cleaning and sanitizing equipment and utensils after the application; and

(C) for restricted use pesticides, applied only by an applicator certified as defined in 7 USC 136(e), Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.

(e) Container prohibitions, poisonous or toxic material containers. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food. A food container may not be used to store, transport, or dispense poisonous or toxic materials.

(f) Chemicals.

(1) Sanitizers, criteria. Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces shall meet the requirements specified in 21 CFR 178.1010, Sanitizing Solutions.

(2) Chemicals for washing fruits and vegetables, criteria. Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315, Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

(3) Boiler water additives, criteria. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310, Boiler Water Additives.

(4) Drying agents, criteria. Drying agents used in conjunction with sanitization shall:

(A) contain only components that are listed as one of the following:

(i) generally recognized as safe for use in food as specified in 21 CFR 182 - Substances Generally Recognized as Safe, or 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe;

(ii) generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe;

(iii) approved for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients;

(iv) specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178; or

(v) approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39, Threshold of regulation for substances used in food-contact articles; and

(B) when sanitization is with chemicals, the approval required in subparagraph (A)(iii) or (v) of this paragraph or the regulation as an indirect food additive required in subparagraph (A)(iv) of this paragraph, shall be specifically for use with chemical sanitizing solutions.

(g) Lubricants, incidental food contact, criteria. Lubricants shall meet the requirements specified in 21 CFR 178.3570, Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.

(h) Pesticides.

(1) Restricted use pesticides, criteria. Restricted use pesticides as specified in subsection (d)(2)(C) of this section shall be listed by the U.S. Environmental Protection Agency (EPA) as meeting the requirements specified in 40 CFR 152 Subpart I, Classification of Pesticides.

(2) Rodent bait stations. Rodent bait shall be contained in a covered, tamper-resistant bait station.

(3) Tracking powders, pest control and monitoring.

(A) A tracking powder pesticide may not be used in a food establishment.

(B) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

(i) Medicines.

(1) Restriction and storage.

(A) Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

(B) Medicines that are in a food establishment for the employees' use shall be labeled as specified under subsection (a) of this section and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(2) Refrigerated medicines, storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

(A) stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(B) located so that they are inaccessible to children.

(j) First aid supplies, storage. First aid supplies that are in a food establishment for the employees' use shall be:

(1) labeled as specified under subsection (a) of this section; and

(2) stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.

(k) Other personal care items, storage. Except as specified in subsections (i)(2) and (j) of this section, employees shall store their other personal care items as specified under §229.167(i)(2) of this title (relating to Physical Facilities).

(l) Storage and display, separation. Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) separating the poisonous or toxic materials by spacing or partitioning; and

(2) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

§229.169. *Mobile Food Establishments.*

(a) Mobile food establishment provisions.

(1) General. Mobile food establishments shall comply with the requirements of these rules, except as otherwise provided in this paragraph and in paragraph (2) of this subsection. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements as specified in paragraphs (5) and (6) of this subsection; subsection (b)(1) of this section; subsection (c)(1)(A)-(E) of this section and §229.164(k)-(n) of this title (relating to Food).

(2) Restricted operation. Mobile food establishments that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of these sections, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with the requirements of these rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Single-service articles. Mobile food establishments shall provide only single-service articles for use by the consumer.

(4) Existing refrigeration equipment. Existing refrigeration equipment will be upgraded to meet the 41 degree Fahrenheit requirement or replaced as specified in §229.164(n)(6)(C) of this title.

(5) Mobile water tank and mobile food establishment water tank.

(A) Approved materials. Materials that are used in the construction of a mobile water tank, mobile food establishment water tank and appurtenances shall meet the requirements specified in §229.165(a)(1)(A), (B), and (D) of this title (relating to Equipment, Utensils, and Linens).

(B) Water system. A mobile food unit requiring a water system shall meet the requirements of §229.166(a)-(d) of this title (relating to Water, Plumbing, and Waste). The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and hand washing, in accordance with the requirements of these rules.

(C) Enclosed system, sloped to drain. A mobile water tank shall be enclosed from the filling inlet to the discharge outlet and sloped to an outlet that allows complete drainage of the tank. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of these rules.

(D) Inspection and cleaning port, protected and secured. If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(i) flanged upward at least 13 millimeters (one-half inch); and

(ii) equipped with a port cover assembly that is provided with a gasket and a device for securing the cover in place, and flanged to overlap the opening and sloped to drain.

(E) "V" type threads, use limitation. A fitting with "v" type threads on a water tank inlet or outlet may be allowed only when a hose is permanently attached.

(F) Tank vent, protected. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(i) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(ii) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(G) Inlet and outlet, sloped to drain.

(i) A water tank and its inlet and outlet shall be sloped to drain.

(ii) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(H) Hose, construction and identification. A hose used for conveying drinking water from a water tank shall be:

(i) safe;

(ii) durable, corrosion-resistant, and nonabsorbent;

(iii) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(iv) finished with a smooth interior surface; and

(v) clearly and durably identified as to its use if not permanently attached.

(I) Filter, compressed air. A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

(J) Protective cover or device. A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

(K) Mobile food establishment tank inlet. A mobile food establishment's water tank inlet shall be 19.1 millimeters (three-fourths inch) in inner diameter or less and provided with a hose connection of a size or type that will prevent its use for any other service.

(L) System flushing and disinfection. A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

(M) Using a pump and hoses, backflow prevention. A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(N) Protecting inlet, outlet, and hose fitting. If not in use, a water tank and hose inlet and outlet fitting shall be protected as specified under subparagraph (J) of this paragraph.

(O) Tank, pump, and hoses, dedication.

(i) Except as specified in clause (ii) of this subparagraph, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

(ii) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized after each use.

(6) Sewage, other liquid waste, and rainwater.

(A) Waste retention. If liquid waste results from operation of a mobile food establishment, the waste shall be stored in a permanently installed retention tank.

(B) Capacity and drainage. A sewage holding tank in a mobile food establishment shall be:

(i) sized at least 15% larger in capacity than the water supply tank; and

(ii) sloped to a drain that is 25 millimeters (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(C) All connections on the vehicle for servicing the mobile food establishment waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food establishment.

(D) Discharge liquid waste shall not be discharged from the retention tank while the mobile food establishment is in motion.

(E) Flushing a waste retention tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner.

(F) Removing mobile food establishment wastes. Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. Mobile food establishments shall operate from a central preparation facility or other fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations.

(2) Construction. The central preparation facility or other fixed food service establishment, used as a base of operation for mobile food establishments, shall be constructed and operated in compliance with the requirements of these rules.

(c) Servicing area and operations.

(1) Protection.

(A) A mobile food establishment servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation except those areas used only for the loading of water and/or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(B) Within this servicing area, a location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for water servicing and for the loading and unloading of food and related supplies.

(C) This servicing area will not be required where only packaged food is placed on the mobile food establishment or where mobile food establishments do not contain waste retention tanks.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area according to law and stored and handled in a way that protects the water and equipment from contamination.

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of §229.167(c)(1) of this title (relating to Physical Facilities).

§229.171. *Compliance and Enforcement.*

(a) Use for intended purpose, public health protection.

(1) Safeguarding public health. The regulatory authority shall apply these rules to promote its underlying purpose, as specified in §229.161 of this title (relating to Purpose), of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(2) Assessment of existing facilities. In enforcing the provisions of these rules, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of these rules based on the following considerations:

(A) whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

(B) whether food-contact surfaces comply with §229.165(a) of this title (relating to Equipment, Utensils, and Linens); and

(C) whether the capacities of cooling, heating, and holding equipment are sufficient to comply with §229.165(g)(1) of this title.

(b) Additional requirements, preventing health hazards, provision for conditions not addressed.

(1) Option to impose additional requirements. If necessary to protect against public health hazards or nuisances, the department may impose specific requirements in addition to the requirements contained in these rules if authorized by law.

(2) Required documentation. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. A copy of the documentation shall be provided to the food establishment and the original shall be maintained in the regulatory authority's file for the food establishment.

(c) Variances.

(1) Modifications and waivers. The department's Retail Foods Division may grant a variance by modifying or waiving the requirements of these rules if in its opinion a health hazard or nuisance will not result from the variance. If a variance is granted, the department shall retain the information specified in paragraph (2) of this subsection in its records for the food establishment.

(2) Documentation of proposed variance and justification. Before a variance from a requirement of these rules is approved, the information that shall be provided by the person requesting the variance shall include:

(A) a statement of the proposed variance of the rule requirement citing relevant rule section numbers;

(B) an analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal; and

(C) a Hazard Analysis Critical Control Point (HACCP) plan if required as specified in subsection (d)(1)(A) of this section that includes the information specified in subsection (d)(2)(A) of this section as it is relevant to the variance requested.

(3) Conformance with Approved Procedures. If a variance is granted as specified in paragraph (1) of this subsection, or a

HACCP plan is otherwise required as specified in subsection (d)(1) of this section, the food establishment shall:

(A) comply with the HACCP plans and procedures that are submitted and approved as specified in subsection (d)(2) of this section as a basis for the modification or waiver; and

(B) maintain and provide upon request, records specified in subsection (d)(2)(D) and (E) of this section that demonstrate that the following are routinely employed:

(i) procedures for monitoring critical control points;

(ii) monitoring of the critical control points;

(iii) verification of the effectiveness of an operation or process; and

(iv) necessary corrective actions if there is failure at a critical control point.

(d) HACCP plan requirements.

(1) When a HACCP plan is required.

(A) Before engaging in an activity that requires a HACCP plan, a food establishment shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under paragraph (2) of this subsection and the relevant provisions of these rules if a variance is required as specified under §229.164(o)(1) of this title (relating to Food) or §229.165(f)(10)(B) of this title.

(B) A food establishment shall have a properly prepared HACCP plan as specified under §229.164(o)(2) of this title.

(2) Contents of a HACCP plan. For a food establishment that is required under paragraph (1) of this subsection to have a HACCP plan, the plan and specifications shall indicate:

(A) a categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;

(B) a flow diagram by specific food or category type identifying critical control points and providing information on the following:

(i) ingredients, materials, and equipment used in the preparation of that food; and

(ii) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(C) food employee and supervisory training plan for the person(s) in charge and food employee(s) pertaining to public health and the safety and integrity of food;

(D) a statement of standard operating procedures for the plan under consideration including and clearly identifying:

(i) each critical control point;

(ii) the critical limits for each critical control point;

(iii) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;

(iv) the method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;

(v) action to be taken by the person in charge if the critical limits for each critical control point are not met; and

(vi) records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(E) additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

(e) Confidentiality, trade secrets. The regulatory authority shall treat as confidential in accordance with the requirements of the Public Information Act, Texas Government Code, Chapter 552, information that meets the criteria for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in subsection (d)(2) of this section.

(f) Permit requirement, prerequisite for operation. A person may not operate a food establishment without a valid permit or license to operate issued by the regulatory authority.

(g) Conditions of permit retention, responsibilities of the permit holder. Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

(1) post the permit in a location in the food establishment that is conspicuous to consumers;

(2) comply with the provisions of these rules including the conditions of a granted variance as specified under subsection (c)(3) of this section;

(3) if a food establishment is required under subsection (d)(1) of this section to operate under a HACCP plan, comply with the plan as specified under subsection (c)(3) of this section;

(4) immediately discontinue operations and notify the regulatory authority if an imminent health hazard exists as specified in subsection (k) of this section;

(5) allow representatives of the regulatory authority access to the food establishment as specified under subsection (i)(1) of this section;

(6) except as specified in paragraph (7) of this subsection, replace existing facilities and equipment allowed in subsection (a) of this section with facilities and equipment that comply with these rules if:

(A) the regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

(B) there is a change of ownership in the establishment; or

(C) the facilities and equipment are replaced in the normal course of operation.

(7) except for in-use food preparation line equipment, upgrade or replace refrigeration equipment as specified under §229.164(n)(6)(C) of this title if the circumstances specified under paragraph (6)(A)-(C) of this subsection do not occur first;

(8) comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;

(9) accept notices issued and served by the regulatory authority according to law; and

(10) be subject to the administrative, civil, injunctive, and criminal remedies authorized under law for failure to comply with these rules or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(h) Inspection frequency, performance-based and risk-based. The regulatory authority should inspect each food establishment at least once every six months. If the regulatory authority cannot meet this frequency, inspection frequency shall be prioritized based upon assessment of a food establishment's history of compliance with these rules and the potential for causing foodborne illness by evaluating:

(1) past performance for noncompliance with these rules, including HACCP plan requirements, that are critical;

(2) past performance for numerous or repeat violations of these rules, including HACCP plan requirements, that are noncritical;

(3) the hazards associated with the particular foods that are prepared, stored, or served;

(4) the type of operation including the methods and extent of food storage, preparation, and service;

(5) the number of people served;

(6) whether the population served is a highly susceptible population; and

(7) any other risk factor deemed relevant to the operation by the regulatory authority.

(i) Access.

(1) Allowed at reasonable times after due notice. After the regulatory authority presents official credentials, the person in charge shall allow the regulatory authority to determine if a food establishment is in compliance with these rules by allowing access to the establishment, allowing inspection, and providing information pertaining to food and supplies purchased, received or used, or to persons employed and records specified in these rules during the food establishment's hours of operation and other reasonable times.

(2) Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

(A) inform the person that:

(i) the food establishment is required to allow access to the regulatory authority as specified under this subsection;

(ii) access is a condition of the acceptance and retention of a food establishment permit to operate as specified under subsection (g)(5) of this section; and

(iii) if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection warrant, may be obtained according to law; and

(B) make a final request for access.

(3) Refusal, reporting. If after the regulatory authority presents credentials and provides notice as specified under paragraph (1) of this subsection, explains the authority upon which access is requested, and makes a final request for access as specified in paragraph (2) of this subsection, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(4) Inspection warrant to gain access. If denied access to a food establishment for an authorized purpose and after complying with paragraph (2) of this subsection, the regulatory authority may issue, or apply for the issuance of, an inspection warrant to gain access as provided under law.

(j) Report of findings.

(1) Documenting information and observations. The regulatory authority shall document administrative information about the establishment's legal identity and all other findings and observations on the inspection report form. A copy of the inspection report form shall be furnished to the owner or person in charge which constitutes a written notice. The inspection report form shall summarize the inspection findings, and shall set forth a weighted point value for each classification of inspection items. The total demerits of the establishment shall be the cumulative total of the demerit values of the inspection items.

(2) Specifying time frame for corrections. The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under subsections (k)(1), (l)(1), and (m) of this section.

(3) Issuing report and obtaining acknowledgment of receipt. At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request that the person in charge during the inspection sign the completed inspection report.

(4) Refusal to sign acknowledgment. The regulatory authority shall:

(A) inform a person who declines to sign an acknowledgment of receipt of inspection findings as specified in paragraph (3) of this subsection that:

(i) an acknowledgment of receipt is not an agreement with findings;

(ii) refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified;

(iii) a refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(B) make a final request that the person in charge sign an acknowledgment of receipt of inspection findings.

(5) Public information. Unless prohibited by law and except as specified in subsection (e) of this section, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure upon request.

(6) Inspection report form. For the purposes of Chapter 437, Texas Health and Safety Code, the department adopts the Retail Food Establishment Inspection Report form as specified in the following figure:
Figure: 25 TAC §229.171(j)(6)

(k) Imminent health hazards.

(1) Ceasing operations and reporting.

(A) Except as specified in subparagraph (B) of this paragraph, a food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended

interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

(B) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(2) Resumption of operations. If operations are discontinued as specified under paragraph (1) of this subsection or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

(l) Critical violations, time frame for corrections.

(1) Timely correction.

(A) Except as specified in subparagraph (B) of this paragraph, the food establishment shall at the time of inspection implement immediate corrective actions of all food (PHF) temperature violations; personnel/handling/source requirement violations; facility and equipment requirement violations; any HACCP plan provision that is not in compliance with its critical limit; and all other critical violations noted.

(B) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the food establishment to correct facility and equipment requirement violations.

(2) Verification and documentation of correction.

(A) After observing at the time of inspection a correction of a violation, the regulatory authority shall document the violation and note the corrective action on the inspection report.

(B) As specified under paragraph (1)(B) of this subsection, if immediate correction is not achieved, the regulatory authority shall verify correction of the violation made at the time of the next inspection, document the information on the inspection report, and enter the report in the regulatory authority's records.

(C) When the total cumulative demerit value of an establishment exceeds 30 demerits, the establishment shall initiate immediate corrective action on all identified critical violations and shall initiate corrective action on all other violations within 48 hours. One or more reinspections shall be conducted at reasonable time intervals to assure correction.

(D) In the case of temporary food establishments, all critical violations must be corrected immediately and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not corrected, the establishment shall immediately cease food operations until authorized to resume by the regulatory authority.

(m) Other violations, time frame for corrections.

(1) Time frame. Except as specified in paragraph (2) of this subsection, the food establishment shall correct all other violations as soon as possible, and in any event, by the time of the next routine inspection, but no later than 90 calendar days after the inspection.

(2) Extension of compliance schedule. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under paragraph (1) of this subsection if a written schedule of compliance is submitted by the food establishment

and no health hazard exists or will result from allowing an extended schedule for compliance.

(n) Examination and detention of food. The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The department shall, upon written notice to the owner or person in charge specifying the reason therefor, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code, Chapter 431.

(o) Investigation and control.

(1) Obtaining information: personal history of illness, medical examination, and specimen analysis. The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection by requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

(2) Restriction or exclusion of food employee, establishment closure. Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the regulatory authority may require any or all of the following:

(A) immediately restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;

(B) immediately excluding the employee from all food establishments; or

(C) immediately closing the food establishment until, in the opinion of the regulatory authority, no further danger of disease outbreak exists.

(3) Restriction or exclusion order: warning or hearing not required, information required in order. Based on the findings of the investigation as specified in paragraph (1) of this subsection and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

(A) states the reasons for the restriction or exclusion that is ordered;

(B) states the evidence that the employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(C) states that the suspected employee or the permit holder may request an appeal hearing by submitting a timely request as provided under law; and

(D) provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(4) Release of employee from restriction or exclusion. The regulatory authority shall release an employee from restriction or exclusion according to Texas Health and Safety Code, Chapter 438, §438.033 and the following conditions:

(A) an employee who was infected with *Salmonella typhi* if the employee's stools are negative for *S. typhi* based on testing of at least three consecutive stool specimen cultures that are taken:

(i) not earlier than one month after onset;

(ii) at least 48 hours after discontinuance of antibiotics; and

(iii) at least 24 hours apart;

(B) if one of the cultures taken as specified in subparagraph (A) of this paragraph is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained;

(C) an employee who was infected with *Shigella* spp. or *Escherichia coli* O157:H7 if the employee's stools are negative for *Shigella* spp. or *E. coli* O157:H7 based on testing of two consecutive stool specimen cultures that are taken:

(i) not earlier than 48 hours after discontinuance of antibiotics; and

(ii) at least 24 hours apart; and

(D) an employee who was infected with hepatitis A virus if:

(i) symptoms cease; or

(ii) at least two blood tests show falling liver enzymes.

(p) Reporting of communicable diseases.

(1) Who shall report. Certain persons, as required in 25 Texas Administrative Code (TAC) Chapter 97, §97.2, shall report certain confirmed and suspected foodborne diseases.

(2) What to report. Confirmed and suspected cases of the following diseases, including, but not limited to the following, are reportable: botulism; campylobacteriosis; cryptosporidiosis; *Escherichia coli* O157:H7; hepatitis A, acute viral; listeriosis; salmonellosis; shigellosis; trichinosis; and *Vibrio* infection.

(3) When to report. Reporting of communicable diseases shall be done in accordance with 25 TAC, Chapter 97, §97.4.

(4) Where to report. Persons required to report communicable diseases shall report to the local health authority, or in the case where there is no local health authority, the report shall be made to the department's Regional Director as required in 25 TAC, Chapter 97, §97.5.

(5) Reporting and other duties of local health authorities and regional directors. Local health authorities and regional directors shall report communicable diseases to the department as provided for in 25 TAC, Chapter 97, §97.6.

(q) Food establishment inspector qualifications. An individual conducting inspections of retail food establishments should be a Registered Professional Sanitarian in Texas, as defined in 25 TAC, Chapter 337, §337.181, or meet the equivalent educational requirements in order to:

(1) assure application of basic scientific principles, including HACCP principles of food safety, during inspections;

(2) properly conduct foodborne illness investigations;

(3) assure uniformity in the interpretations of these rules; and

(4) assure fair and uniform enforcement of 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.

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

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Susan K. Steeg

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Texas Department of Health

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Proposal publication date: May 29, 1998

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



Subchapter N. Retail Food Store Sanitation

25 TAC §§229.231-229.239

The repeal is adopted under the Health and Safety Code, §437.0056, which requires the Texas Board of Health (board) to adopt rules for granting and maintaining retail food permits in areas not regulated by counties and public health districts; 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; and Health and Safety Code §431.241.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg

General Counsel

Texas Department of Health

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter N. Migratory Gamebird Proclamation

31 TAC §§65.317, 65.318, 65.320

The Texas Parks and Wildlife Commission adopts amendments to §65.317, 65.318, and 65.320, concerning the Migratory Game Bird Proclamation. Section 65.318, concerning Open Seasons and Bag and Possession Limits, and §65.320, concerning Extended Falconry Season - Late Season Species, are adopted with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg

4217). Section 65.317, concerning Zones and Boundaries for Late Season Species, is adopted without changes and will not be republished. The change to §65.318 reduces duck season length in the High Plains Mallard Management Unit from 97 to 90 days; reduces the pintail duck bag limit from 3 to 1, increases the snow goose bag limit from 10 to 20 and removes the possession limit, increases the Canada goose season in the eastern goose zone by 7 days, and allows an aggregate bag limit of two Canada geese and brant during the last week of the season. The change to 65.320 reduces the extended falconry season for ducks in the North and South Zones from 23 to 16 days and eliminates the extended falconry season in the High Plains Mallard Management Unit. The changes are made as a result of federal frameworks issued by the U.S. Fish and Wildlife Service, Office of Migratory Bird Management and follow the commission policy of adopting the most liberal provisions possible under the federal frameworks.

The amendment to §65.317, concerning Zones and Boundaries for Late Season Species, is necessary to place all species of migratory game birds that are hunted at the same time of year within a single section delineating the zones and boundaries for those species. The amendment to §65.318, concerning Open Seasons and Bag Limits-Late Season, is necessary to adjust season dates to provide for optimum hunter opportunity, move the season dates for sandhill cranes, woodcock, and snipe to another section, and to comply with federal regulations concerning the hunting of migratory game bird resources. The amendment to §65.320, concerning Extended Falconry Seasons for Late Season Species, is necessary to comply with the 107-day maximum season allowed by the Migratory Bird Treaty, remove provisions for sandhill cranes, woodcock, and snipe (which were relocated to another section), and to comply with federal regulations concerning the hunting of migratory game bird resources.

The amendment to §65.317 will function to delineate geographical areas of the state to which various regulations governing the hunting of late season species of migratory game birds apply. The amendment to §65.318 establishes season lengths, bag limits, and possession limits for the hunting of late season species of migratory game birds. The amendment to §65.320 establishes season lengths, bag limits, and possession limits for the hunting of late season species of migratory game birds by means of falconry.

The department received a total of 192 comments regarding adoption of the proposed rules.

No commenters opposed adoption of the proposed rules. Texas Wildlife Association commented in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, Subchapter C, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64, Subchapter C.

§65.318. Open Seasons and Bag and Possession Limits - Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, one mottled duck, one pintail, two redheads, one canvasback, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser.

(A) High Plains Mallard Management Unit: October 17-20, 1998, and October 24, 1998 - January 17, 1999.

(B) North Zone: October 31 -November 8, 1998, and November 14, 1998 -January 17, 1999.

(C) South Zone: October 24 -November 29, 1998, and December 12, 1998 -January 17, 1999.

(2) Geese.

(A) Western Zone.

(i) Light geese: October 31, 1998 - February 14, 1999. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 31, 1998 - February 14, 1999. The daily bag limit for dark geese is five, which may not include more than four Canada geese and one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: October 31, 1998 - February 14, 1999. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: October 24, 1998 - January 17, 1999. The daily bag limit for white-fronted geese is one.

(II) Canada geese and brant: October 31, 1998 - January 31, 1999. The daily bag limit is one Canada goose or one brant, except during the period from January 18-31, when the bag limit is two in the aggregate.

(3) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older. Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 10, 1998;

(B) North Zone: October 24, 1998; and

(C) South Zone: October 17, 1998.

§65.320. *Extended Falconry Season - Late Season Species.*

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons. Ducks, coots, and mergansers:

(1) High Plains Mallard Management Unit: no extended falconry season; and

(2) Remainder of the state: January 18 - February 2, 1999.

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

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-9814517

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



Subchapter O. Commercial Nongame Permits

31 TAC §§65.325-65.327, 65.329-65.332

The Texas Parks and Wildlife Commission adopts new §§65.325-65.327 and §§65.329-65.332, concerning permits for the sale or possession of nongame wildlife. Sections 65.325-65.327 and 65.330 are adopted with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4222). Sections 65.329, 65.331 and 65.332 are adopted without changes and will not be republished.

The change to 65.325, concerning Applicability, reduces the scope of the regulations by exempting fish and dead bobcats, mountain lions, and coyotes, and nonsubstantively restructures the section by relocating language from proposed §65.327(d) to provide greater clarity. The change to 65.326, concerning Definitions, adds a definition for 'possession', and adds language to the definition of 'processed product' to delineate what parts of nongame wildlife are not considered to be processed products. The change to §65.327, concerning Permit Required, liberalizes possession limits; accommodates language in response to changes made to other sections nonsubstantively alters language to make the intent of the rules clearer; clarifies the intent of the Commission with respect to permit requirements for persons shipping nongame wildlife out of state; adds exemptions for albino specimens, employees of governmental entities, and, with qualifications, employees of commercial dealers; incorporates simplified provisions from proposed §65.328 (which is being eliminated as a section) while relocating subsection (d) to §65.325, which makes greater organizational sense. The change to §65.329, concerning Permit Application, alters the language of subsection (d) to comport its effect with changes made to §65.325. The change to §65.330, concerning Record and Reporting Requirements, makes nonsubstantive language changes regarding the duties of department employees; relaxes the reporting frequency of permittees from quarterly to annually; and allows the submission of log entries in lieu of invoices.

The new rules are necessary to allow the department to monitor the impact of commercial trade and collection activities involving the state's nongame wildlife populations in order to determine if there are nongame species in need of management, and to discharge the department's statutory duty as set forth in Parks and Wildlife Code, Chapter 67.

The new rules will function by: delineating the scope of applicability with respect to persons who possess, collect, sell, and resell nongame wildlife; defining words and terms used in the rules; requiring, with qualifications, persons engaged in the collection or sale of nongame wildlife to possess a permit for those activities; articulating permit restrictions such that the privileges accruing to permit holders are clear; specifying permit application procedures and conditions under which permits may or may not be issued; establishing reporting requirements; listing the species to which the rules apply; and providing for violations and penalties.

The department received 211 comments concerning adoption of the proposed rules. One-hundred and two comments opposed adoption of the proposed rules for the reasons following. COMMENT: The department doesn't know how many animals die after collection. RESPONSE: The department disagrees with the comment because it immaterial to the department's intent. The rules are intended to collect data on the commercial trade in wild populations. The removal of an animal is what is being monitored; when an animal is removed from the wild, its impact on the ecosystem ceases, whether it is alive or dead. No changes were made as a result of the comment. COMMENT: The department doesn't know how much habitat destruction occurs as a result of collection activities. RESPONSE: The department disagrees with the comment because it is immaterial to the department's intent. The department's intent is to assess commercial trade in nongame wildlife; impacts upon habitat, though obviously of biological importance, are beyond the purview of the rules. No changes were made as a result of the comment. COMMENT: The department is unable to differentiate animals collected out-of-state from those collected in-state. RESPONSE: The department disagrees with the comment. The rules apply to species and subspecies of indigenous wildlife in this state, irrespective of their origin; this is the only way to ensure that all commercial activity involving these species can be monitored. No changes were made as a result of the comment. COMMENT: The rules do not apply to arachnids. RESPONSE: The department agrees with the comment. The rules do not apply to arachnids. No changes were made as a result of the comment. COMMENT: Many people pay other people to collect for them. RESPONSE: The department agrees with the comment, which is why permit requirements are triggered by possession limits and/or the acts of sale and resale. No changes were made as a result of the comment. COMMENT: Collectors, hobbyists, and captive breeders are being treated the same as commercial entities. RESPONSE: The department disagrees with the comment. A person who collects to the extent of exceeding the possession limits, or who sells nongame wildlife, is required to have a collector's permit. A person who buys and then resells wildlife is required to have a dealer's permit. No changes were made as a result of the comment. COMMENT: Large collections legally held prior to the rules must now be permitted. RESPONSE: The department conditionally agrees with the comment. The permit requirements would apply only to those specimens specifically being regulated, if such specimens are in excess of possession limits, or if the possessor is engaged in their sale or resale. No changes were made as a result of the comment. COMMENT: A person could possess one snake and not trigger the permit requirements; however, if the snake hatches a clutch of eggs, the possession limit could be exceeded and the person must have a collector's permit. RESPONSE: The department agrees

with the comment. Persons in excess of the possession limit are required to have a permit, irrespective of how such possession came to occur. No changes were made as a result of the comment. COMMENT: Native species of wildlife that are captive-bred out-of-state will be regulated, making it difficult for people to maintain breeding populations. RESPONSE: The department disagrees. No part of the rules prohibits the possession of nongame wildlife, although if possession limits are exceeded, or if the possessor engages in sale or resale, that person must have the appropriate permit. No changes were made as a result of the comment. COMMENT: If a person buys an animal from a pet store and then sells it, they must have a dealer's permit. RESPONSE: The department agrees with the comment. Any person who buys and then sells a specimen of nongame wildlife must also possess a dealer's permit. This is necessary to provide for a uniform applicability of the rules to regulated activities. No changes were made as a result of the comment. COMMENT: The applicability of the rules to captive-bred wildlife as well as to wild-caught wildlife will de-emphasize captive breeding and encourage the importation and propagation of nonnative species. RESPONSE: The department disagrees with the comment. The rules as adopted do not prohibit anyone from obtaining or breeding any species of nongame wildlife. No changes were made as a result of the comment. COMMENT: The rules are burdensome to pet stores. RESPONSE: The agency disagrees with the comment. The rules as adopted impose permit and reporting requirements that are consonant with other regulations governing the take, possession, and sale of indigenous wildlife. No changes were made as a result of the comment. COMMENT: The penalties for violations of the rules are excessive. RESPONSE: The department disagrees with the comment. The penalties for violations of the rules were established by the legislature; the department has no authority to modify them. No changes were made as a result of the comment. COMMENT: The federal government will use violations of state law to invoke the Lacey and RICO Acts. RESPONSE: The department neither agrees nor disagrees with the comment. Federal actions with respect to the Lacey and RICO Acts are solely a function of federal prosecutorial authority. No changes were made as a result of the comment. COMMENT: Adoption of the rules should be postponed in order further refine the regulations. RESPONSE: The department disagrees with the comments. The rules as adopted are sufficient to achieve the stated goal of the department, which is to monitor commercial activities involving nongame wildlife; however, they can modified from time to time as necessity dictates. No changes were made as a result of the comment. COMMENT: The department should create a nongame advisory committee. RESPONSE: The department agrees with the comment; however, the establishment of such an advisory group can be achieved without rulemaking. No changes were made as a result of the comment. COMMENT: The paperwork required by rules is burdensome. RESPONSE: The department agrees with the comment, and changes have been made accordingly. COMMENT: The fees for the permits are too high. RESPONSE: The department disagrees with the comments. The fees for the permits are intended to defray the cost to the agency of processing applications and administering the program; if anything, they may be too low, but in any event, the department does not believe they place an undue financial burden on resource users. No changes were made as a result of the comment. COMMENT: The rules won't provide the department with significant or accurate data. RESPONSE: The department disagrees with the comments. The goal of the

department is to gather information on commercial activity; the rules are designed to accomplish that goal and no other. No changes were made as a result of the comment. COMMENT: The fees for nonresident permits are too high. RESPONSE: The department disagrees with the comment. The fees for nonresident permits are in keeping with the practice in Texas and most other states of setting nonresident fees higher than those for residents. No changes were made as a result of the comment. COMMENT: A farmer who kills more than ten rats and then gathers them for disposal would need a permit. RESPONSE: The department disagrees with the comment. Although technically anyone in possession of more than ten specimens of a species is in violation, the hypothetical violation could be avoided by being in possession of no more than nine rats at a time. No changes were made as a result of the comment. COMMENT: The rules do not go far enough; there should be a ban on all possession of nongame wildlife. RESPONSE: The department disagrees with the comment. The department follows commission policy of providing for equitable and sustainable uses of wildlife resources according to the tenets of sound biological management. No changes were made as a result of the comment. COMMENT: The rules as adopted are at odds with published proposal because of exemptions for the on and sale of dead bobcats, mountain lions, and coyotes. RESPONSE: The department disagrees with the comment. The changes to the proposed rules are within the agency's statutory authority to adopt. COMMENT: The department did not do enough to inform the public about the proposed rules and there were too many versions of the rules. RESPONSE: The agency disagrees with the comment. The department held a series of public meetings, issued numerous press releases, and published the proposed rules in the *Texas Register*. As for various versions of rule language, the department published the official proposal in the *Texas Register*; alternative rule language was drafted and disseminated as a public courtesy in response to public comment. COMMENT: By adopting the rules, the commission will erode trust and build animosity towards the department. RESPONSE: The department disagrees with the comment. The department is responding to a statutory obligation to protect wildlife resources in the public interest. COMMENT: The rules were 'fast-tracked' to avoid scrutiny. RESPONSE: The department disagrees with the comment. The department has been working with various constituent groups for several years with the intention of eventually arriving at some sort of monitoring program for nongame wildlife; in addition, the proposed rules were presented at three commission meetings over the span of six months, the department held several public meetings to solicit public comment, and the proposed rules were published in the *Texas Register*. COMMENT: Landowners would be liable for allowing the collection of wildlife naturally occurring on private property. RESPONSE: The department disagrees with the comment. The onus of the rules falls upon persons engaging in certain activities; unless the landowner is engaging in those activities, there is no liability, exactly as is the case when a landowner leases hunting rights to a hunter who then proceeds to take game animals or game birds. No changes were made as a result of the comment. COMMENT: The proposed rules contained no definition of possession, and the definitions of commercial activity, resale, and processed product need to be refined and narrowed in scope. RESPONSE: The department agrees and disagrees with the comment. The department agrees that a definition of possession would be useful and such a definition has been added as a change

to the rules as proposed. The department feels that the other definitions accomplish the intention of the agency to precisely delimit the nature of activities which would trigger permit requirements. COMMENT: The proposed rules made no provision for the confidentiality of landowner or permittee information. RESPONSE: The department disagrees with the comment. The confidentiality of certain information collected by the department is guaranteed by statute, and no release of such information by the department is permissible. COMMENT: The proposed preamble stated there would be no economic loss. RESPONSE: The agency disagrees with the comment. There is no such statement in the proposed preamble as published in the *Texas Register*. COMMENT: Captive-bred animals have no bearing on wild populations. RESPONSE: The agency agrees conditionally with the comment. However, it is impossible to distinguish a captive-bred animal, in most cases, from a wild-caught animal. The data collected as a result of the rules will be used by the determine to determine impacts on wild populations. No changes were made as a result of the comment. COMMENT: The emphasis of the rules is on commercial activities rather than collection from the wild. RESPONSE: The agency agrees with the comment. The intent of the department is to monitor commercial activity involving nongame wildlife. No changes were made as a result of the comment. COMMENT: The regulations should be limited to collecting, not keeping or breeding, or captive bred animals. RESPONSE: The agency disagrees with the comment. The intent of the rules is to assess the impact of commercial activity involving nongame wildlife, which includes possession and sale as well as collection. No changes were made as a result of the comment. COMMENT: The possession limits are too low for hobbyists. RESPONSE: The agency agrees with the comment and has made changes accordingly. COMMENT: Falconers are allowed to breed and sell captive-bred raptors, but reptile breeders are not. RESPONSE: The agency disagrees with the comment. Falconers are required to have a permit to engage in the possession, breeding, and sale of raptors; the department sees no inconsistency in the application of the same standards to other resource users. No changes were made as a result of the comment. COMMENT: The rules will encourage dishonesty and create an underground trade. RESPONSE: The department disagrees with the comment. The department believes the rules are reasonable and do not unnecessarily burden the regulated community. COMMENT: There should be no exceptions for rattlesnake round-ups. RESPONSE: The department disagrees with the comment. There are no exceptions for rattlesnake round-ups. Persons collecting for commercial purposes or in possession of snakes in excess of the possession limit are required to possess the appropriate permit. No changes were made as a result of the comment. COMMENT: The rules unfairly target hobbyists, rather than commercial entities. RESPONSE: The department disagrees with the comment. The rules apply to any and all persons who engage in the sale and/or resale of nongame wildlife, and to any and all persons in possession of nongame wildlife in excess of the possession limits, irrespective of whether the person is a hobbyist or is engaged in a commercial activity. No changes were made as a result of the comment. COMMENT: The rules infringe on constitutional rights. RESPONSE: The department disagrees with the comments. The rules were validly promulgated under statutory authority specifically granted to the Texas Parks and Wildlife Commission by the Texas Legislature. COMMENT: The rules impose a new tax on the public. RESPONSE: The

department disagrees with the comment. The fee for a permit is not a levy or an assessment, it is a share of the cost of managing and conserving the resource. No changes were made as a result of the comment. COMMENT: No studies were done on the status of nongame wildlife populations prior to rulemaking. RESPONSE: The agency disagrees with the comment. The rules represent a preliminary effort to assess nongame wildlife populations. The department does not have the fiscal or personnel assets to survey the entirety of the state. The rules will function to give the department information that will identify those populations of nongame wildlife that may need further protection after biological assessments can be performed. No changes were made as a result of the comment. COMMENT: The rules will discourage children from becoming interested in herpetology. RESPONSE: The agency disagrees with the comment. The rules will have no effect on what interests children, or their ability to possess any of the species affected by the rules. No changes were made as a result of the comment. COMMENT: There are too many loopholes and exemptions. RESPONSE: The department disagrees with the comment. The exemptions contained in the rules were created for entities and situations for which the department either can acquire the data another way or which do not result in substantive impacts to the resource. No changes were made as a result of the comment. COMMENT: The proposed preamble incorrectly stated there would be no additional fiscal implications to state or local governments. There must be a cost associated with administering and enforcing the rules. RESPONSE: The agency disagrees with the comment. There is no additional cost to state or local governments. The program will be enforced without an increase in budget; and the administrative cost will be split between permit fees and currently budgeted personnel. COMMENT: The proposed preamble states that the cost of compliance for small businesses is the same as the cost of compliance for the largest businesses, but that is a false statement unless only the cost of the permits is considered. RESPONSE: The agency disagrees with the comment. The only cost mandated by rule is the cost of a permit, and the permits cost the same for big businesses as they do for small businesses. No changes were made as a result of the comment. COMMENT: The proposed preamble states that the rules will not impact local economies, which is not true. RESPONSE: The agency disagrees with the comment. The department does not believe that the rules will cause most collectors or dealers to cease their activities rather than comply. No changes were made as a result of the comment. COMMENT: The language in the rules is too vague. RESPONSE: The department disagrees with the comment. The department believes the rule language is sufficiently precise that the rules can be enforced. No changes were made as a result of the comment. COMMENT: There is no reason to exempt bait dealers from the rules. RESPONSE: The department disagrees with the comment. Bait dealers are subject to reporting requirements, and the department chose not to require them to do so twice. No changes were made as a result of the comment. COMMENT: There is no reason to require that a permit be kept on the person of the permittee. RESPONSE: The department disagrees with the comment. The department believes that the easiest and quickest way for a warden in the field to determine if a person is permitted is to require that the permit be carried on one's person during all permitted activities. No changes were made as a result of the comment. COMMENT: The rules mean that a scientific collection permit is invalid. RESPONSE: The department disagrees with the

comment. The rules specifically state that a nongame permit is not required for activities conducted under a permit issued in accordance with Chapter 43 of the Parks and Wildlife Code. No changes were made as a result of the comment. COMMENT: The department should replace the permits with a stamp requirement. RESPONSE: The department disagrees with the comment. The Nongame Stamp is established by statute, no part of which authorizes the department to require its purchase or possession. No changes were made as a result of the comment. COMMENT: Both permits should be available through point-of-sale. RESPONSE: The department disagrees. The nature of the information an applicant must supply to the department necessitates an applications process for the dealer's permit, and the department may address this issue without initiating rulemaking. No changes were made as a result of the comment. COMMENT: The department should not take previous violations of the Parks and Wildlife Code into account when issuing permits. RESPONSE: The department disagrees with the comment. The department believes that persons with a history of convictions for violations of wildlife laws should be scrutinized before being allowed to collect, possess, or sell nongame wildlife. No changes were made as a result of the comment. COMMENT: Quarterly reports are unnecessary. RESPONSE: The department agrees with the comment and has changed the reporting period to an annual basis. COMMENT: The requirement to furnish permits and logs to a game warden 'upon demand' is unnecessarily confrontational. RESPONSE: The department has changed the wording to 'upon request.'

Sixty-seven commenters were in favor of the proposed regulations.

Bat Conservation International, Lone Star Chapter Sierra Club, Sweetwater Jaycees, National Wildlife Federation, Gulf States Natural Resource Center, Texas Committee on Natural Resources, Lone Star Bowhunters Association, Texas Trappers and Furhunters Association, Wildlife Society, Texas Audubon, Texas Wildlife Association, Austin Zoo, and the Wildlife Biology Faculty of Southwest Texas State University commented in favor of adoption.

National Reptile and Amphibian Advisory Council, Texas Reptile Expo, Texas Reptile Breeders Association, and the Hill Country Heritage Association opposed adoption.

The new sections are adopted under Parks and Wildlife Code, Chapter 67, which provides the commission with authority to establish any limits on the take, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife.

§65.325. Applicability.

(a) Except as provided in subsection (b) of this section, this subchapter applies to the nongame wildlife listed in §65.331 of this title (relating to Affected Species), living or dead, including parts of nongame wildlife and captive-bred nongame wildlife.

(b) This subchapter does not apply to:

- (1) dead mountain lions, bobcats, or coyotes;
- (2) fish;
- (3) the purchase, possession, or sale of processed products;
- (4) teachers at accredited primary or secondary educational institutions, provided that the nongame wildlife is possessed

solely for educational purposes and is not sold or transferred to another person for the purpose of sale;

(5) persons or establishments selling nongame wildlife for and ready for immediate consumption in individual portion servings, and which are subject to limited sales or use tax; or

(6) persons 16 years of age or younger, provided the person is not engaged in a commercial activity involving nongame wildlife;

(7) aquatic products possessed under a valid bait dealer's license; or

(8) albinos of any species of nongame.

§65.326. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by the Parks and Wildlife Code or regulatory definitions adopted under the authority of Parks and Wildlife Code.

(1) Captive-bred - Any wildlife born in captivity from parents held in captivity.

(2) Commercial activity - The sale, offer for sale, exchange, or barter of nongame wildlife.

(3) Possession - actual care, custody, or control of nongame wildlife.

(4) Resale - Any transaction or activity in which a person purchases nongame wildlife or otherwise acquires nongame wildlife for a consideration and subsequently transfers or delivers the same nongame wildlife to any person in exchange for compensation or remuneration of any kind.

(5) Processed product -

(A) nongame wildlife or parts of nongame wildlife that have been treated or prepared, by means other than refrigeration or freezing, to prevent decomposition; or

(B) parts of nongame wildlife that do not require treatment or preparation to prevent decomposition.

§65.327. *Permit Required.*

(a) Except as provided in this section or in §65.325 of this title (relating to Applicability), no person in this state may possess nongame wildlife for commercial purposes, or possess more than ten specimens of a single subspecies of nongame wildlife or more than 25 specimens of nongame wildlife in the aggregate, unless that person possesses a valid commercial collection permit or a valid nongame dealer permit issued by the department.

(b) No person in this state may resell nongame wildlife unless that person possesses a valid nongame dealer permit by the department.

(c) No person may sell nongame wildlife unless that person possesses a valid commercial nongame collection permit.

(d) No person may, for the purpose of sale, transport or ship nongame wildlife out of this state, or cause such transport or shipment, unless that person possesses an applicable, valid nongame permit issued by the department.

(e) Except as provided by subsection (f) of this section, a permit required by this subchapter shall be possessed on the person of the permittee during any activity governed by this subchapter; however, an employee of the holder of a nongame dealer's permit

may engage in commercial activity or the resale of nongame wildlife at a permanent place of business operated by the permittee, provided that:

(1) the employer's permit is maintained at the place of business during all activities governed by this subchapter; and

(2) the place of business has been identified on the application required by 65.329 of this title (relating to Permit Application).

(f) In the event that the holder of a nongame dealer's permit conducts activities at a place in addition to a permanent place of business, that person shall possess on their person a legible photocopy of a valid nongame dealer's permit during all such activities.

(g) This subchapter does not relieve any person of the obligation to possess an appropriate hunting license for any activity involving the take of nongame wildlife.

§65.330. *Record and Reporting Requirements.*

(a) A person possessing a commercial collection permit shall:

(1) maintain and possess upon their person during any collection activities a daily collection log indicating the date, location, and number of specimens of each species collected and/or possessed during the period of validity of the permit, which shall be presented upon the request of a department employee acting within the official scope of their duties; and

(2) complete and submit to the department a annual report, accompanied by the permittee's collection log, by the 15th of September of each year.

(b) A person possessing a nongame dealer permit shall:

(1) maintain a current daily record of all purchases and sales, which shall be presented upon request to department employee acting within the official scope of their duties;

(2) maintain a collection log, invoice, or receipt identifying the source or origin of each specimen of nongame wildlife in possession, which shall be presented upon request to an employee of the department acting within the official scope of their duties; and

(3) complete and submit to the department an annual report by the 15th of September of each year.

(c) All records required by this section shall be retained and kept available for inspection for a period of one year following the period of validity of the permit under which they are required to be kept.

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-9814516

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



Part IV. School Land Board

Chapter 151. General Rules of Practice and Procedure

31 TAC §§151.1–151.5

The General Land Office and the School Land Board adopt the repeal of Chapter 151, §§151.1-151.5, relating to General Rules of Practice and Procedure, without changes to the proposal as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7716).

The repeal of Chapter 151 and the ultimate adoption of the new Chapter 151 has been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and will ensure that the SLB operates according to administrative rules that are clear, necessary and up-to-date.

No comments were received regarding the repeal of this chapter.

This chapter is repealed under Texas Natural Resources Code, §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and Texas Natural Resources Code, §32.062 which grants rulemaking authority to the School Land Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814761

Garry Mauro

Commissioner, General Land Office

School Land Board

Effective date: October 7, 1998

Proposal publication date: July 31, 1998

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



Chapter 151. Operations of the School Land Board

31 TAC §§151.1–151.4

The General Land Office (GLO) and the School Land Board (SLB) adopt new Chapter 151, §§151.1-151.4, concerning Operations of the School Land Board, without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7717). The text will not be republished.

The new chapter is being adopted in order to ensure that the SLB operates according to administrative rules that are clear, necessary and up-to-date.

The new chapter allows lease sales to be held on the third Tuesday of a given month, as well as on the first Tuesday. Also, fees charged for the nomination of tracts for the lease sale will now only be refunded if the commissioner of the GLO determines that it is in the best interest of the state. Finally, the new chapter requires nominators of tracts for special lease sales to share in the costs of any required advertising for those sales.

No comments were received regarding adoption of the new chapter.

The new chapter is adopted under Texas Natural Resources Code, §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and Texas Natural Resources Code §32.062 which grants rulemaking authority to the SLB.

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 17, 1998.

TRD-9814763

Garry Mauro

Commissioner, General Land Office

School Land Board

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Proposal publication date: July 31, 1998

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



Chapter 153. Exploration and Development

31 TAC §§153.1–153.4

The General Land Office and the School Land Board adopt the repeal of Chapter 153, §§153.1-153.4, relating to Exploration and Development, without changes to the proposal as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7719).

The repeal of Chapter 153 has been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167, and will ensure that the SLB operates according to administrative rules that are clear, necessary and up-to-date.

No comments were received regarding the repeal of this chapter.

This chapter is repealed under Texas Natural Resources Code, §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and Texas Natural Resources Code §32.062 which grants rulemaking authority to the School Land Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Garry Mauro

Commissioner, General Land Office

School Land Board

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



Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

Subchapter E. Economically Distressed Areas Program

31 TAC §363.502, §363.505

The Texas Water Development Board (board) adopts amendments to §363.502 and §363.505, concerning Financial Assistance Programs. Section 363.502 is adopted with a minor change for clarification to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7722). Section 363.505 is adopted without changes to the proposed text and will not be republished. Amendments to §363.502 and §363.505 amend definitions and amend provisions for the calculation of financial assistance in the Economically Distressed Areas Program.

Amendments to §363.502 amend the definition for "Living Unit Equivalents or LUE" to be an annual average of residential water usage rather than a monthly average, to differentiate between existing provider utilities and a new utility services, and for existing provider utilities, insure that the number of LUE's is not less than the existing number of service connections. The definitions for "Regional Capital Component Benchmark" and "Regional Payment Benchmark" are amended to rely on comparable service providers rather than on a geographic proximity. A definition of "Comparable Service Provider" is added to identify comparable service providers as providing similar service to similarly sized population, with a similar treatment capacity, and with customers of the similar per capita income. The section is further amended to number definitions in accordance with new Texas Register requirements. A minor change was made to the proposed text to clarify a reference to another section of this title.

Amendment to §363.505 revises the methodology for determining the amount and form of financial assistance on applications requesting an increase in the amount of financial assistance previously provided by the board for projects under the Economically Distressed Areas Program. The current method for determining the amount of the loan for project increases would be to determine a grant to loan ratio based on the current board methodology for determining the amount and form of financial assistance for the project increase only, to also determine the amount of the loan for the increase based on the grant to loan ratio originally given for the project, and for the board to accept the larger of the two amounts as the amount of financial assistance to be added to the original loan for the project. The remainder of the requested increase would be in the form of a grant. The method adopted herein for determining the amount of the loan for project increases will determine a loan amount using the current capital component methodology for the total project including the increase and then deduct any amounts previously provided in a loan, will also determine the amount of the loan for the increase based on the grant to loan ratio originally given for the project and apply that ratio to the requested increase only, and for the board to accept the larger of the two amounts as the amount of financial assistance to be added to the original loan for the project. The remainder of the requested increase will be in the form of a grant.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code, §§6.101 and 16.342 which provide the Texas

Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and the authority to adopt rules that are necessary to carry out the program provided by Subchapter K, Chapter 17, of the Water Code.

§363.502. Definitions of Terms.

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

(1) Capital component - That component of the existing rate of a provider utility for the applicable utility service used to retire the long term capital debt of the system determined by calculating a monthly average of the existing annual long term capital debt payments of the utility service provider divided by the total number of living unit equivalents (LUE).

(2) Comparable service provider - A service provider that provides the same type of service as the provider utility for the proposed project to a similarly sized population, with a similar treatment capacity, and serving a population that has a similar per capita income based on available census data adjusted pursuant to the calculation set forth in the §371.24(b)(7) of this title (relating to Disadvantaged Community Program through Loan Subsidies) for adjusted median household income.

(3) Default rate - The average monthly number of residential customers that are delinquent in payment in excess of six months for the service provided divided by the average monthly total number of residential customers.

(4) Living unit equivalents or LUE - The number of existing or projected residential rate payer equivalents for the provider utility in the area to be served by a proposed project which is calculated by dividing:

(A) for existing provider utilities, the total historical annual water use of the provider utility, which includes the residential, commercial and institutional water use, by the historical average annual water use of an average residential connection of the provider utility, provided however, that in no event shall the number of LUE's for the project area be less than the number of service connections of the provider utility for the project area; or

(B) for new provider utilities, the total estimated annual water use of the provider utility, which includes the residential, commercial and institutional water use, by the estimated average annual water use of an average residential connection of the provider utility, provided however, that in no event shall the number of LUE's for the project area be less than the estimated number of service connections of the provider utility for the project area.

(5) Long term capital debt - The total amount of outstanding indebtedness of an applicant that at the time the debt was incurred was intended to be repaid over a period longer than one year, the proceeds of such indebtedness being used for the purpose of acquiring, constructing, or improving a water or sewer system or a necessary component to the service, operation, or maintenance of such system, including long term capital leases of real property and provided that leases for personal property are excluded.

(6) Payment rate - One minus the default rate of a service utility.

(7) Provider utility - the entity which will provide water supply or wastewater service to the economically distressed area.

(8) Regional capital component benchmark - The average capital component of all customers of no less than three comparable service providers.

(9) Regional payment benchmark - The average of the payment rates of no less than three comparable service providers.

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-9814801

Suzanne Schwartz

General Counsel

Texas Water Development Board

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



Chapter 367. Agricultural Water Conservation Program

The Texas Water Development Board (the board) adopts the repeal of 31 TAC §§367.1, 367.41-367.50 and 367.70-367.79 and new §§367.1 and 367.40-367.51 concerning the Agricultural Water Conservation Program without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7724) and which will not be republished.

Repealed §§367.41-367.50 are obsolete as funding is no longer available for the pilot program for low interest loans for agricultural water conservation equipment. Sections 367.70-367.79 are repealed and incorporated into new §§367.40-367.51 in order to renumber the sections, incorporate an expanded list of eligible projects pursuant to Texas Water Code, §17.895, and add provisions for engineering and environmental reviews for projects that involve construction activities. New §367.1 eliminates references to the repealed sections.

In order to comply with new Texas Register structuring requirements, §§367.1-3 and 367.21- 367.30 will be known as Subchapter A, Grants for Equipment Purchases. New §§367.40 - 367.51 will be known as Subchapter B, Agricultural Water Conservation Loan Program.

The substantive changes made in §§367.40-367.51 from the repealed §§367.70-367.79 are as follows:

The definition of executive administrator has been amended to indicate that the term includes a designated representative of the executive administrator. This is consistent with provisions of the Texas Water Code which allow the executive administrator to delegate certain duties to deputy administrators and other staff.

In new §367.43, previously §367.73, two new purposes for making conservation loans have been specified, consistent with changes to the Texas Water Code: loans for preparing and maintaining land for brush control activities, and precipitation enhancement activities in areas of the state where such activities would be, in the board's judgement, most effective. Subsection (c) has been added in new §367.43 to conform to changes made during the 75th legislative session, and specifies that the board may make conservation loans to borrower districts for the

cost of purchasing and installing devices on public or private property designed to indicate the amount of water withdrawn for irrigation purposes. Prior to this change board loans to borrower districts could only be used on district facilities.

New §367.44, previously §367.74, includes new subsection (c) specifying that the board establishes the rate of interest it charges for loans to lender districts for conservation loans to borrower districts. New subsection (d) specifies that the lender district may charge individual borrowers an interest rate not to exceed the interest rate the lender district is charged by the board plus one percent for administrative expenses. Subsection (e) specifies that the lender district may charge an individual borrower a one time application fee in an amount determined by the board to cover costs of processing loan applications.

New §367.45, previously §367.75, includes a requirement to provide a certified copy of a resolution adopted by the governing body approving the application and authorizing representatives for executing the application.

New §367.46, previously §367.76, specifies the statutory requirements that the board must consider and find in approving an application for a loan.

New 367.48 requires borrower districts to obtain executive administrator approval of contract documents and engineering plans and specifications prior to receiving bids and awarding the contract. It specifies the provision that the contract documents must contain, including compliance with the board's rules and statutes, retainage requirements of 5% and a contractor's act of assurance. It requires borrower districts to provide for adequate inspection of projects by registered professional engineers and to require engineers' assurance that work is performed in a satisfactory manner. It provides for the executive administrator's inspection of the project. It specifies that substantial alterations in the purpose of the project or increases in the loan commitment will require board approval. It specifies the conditions upon which the certificate of completion will be provided from the executive administrator after which final release of retainage may be made.

New §367.49 provides for borrower districts to conduct environmental assessments upon projects which require erecting, building, altering, remodeling, improving, or extending a water supply project, and which require surface or subsurface soil disturbance or alteration of existing vegetation.

New §367.51(b) requires that lender districts provide a report on loans made to borrowers during the preceding state fiscal year.

No comments were received on the repeals and new sections.

Subchapter A. Grants for Equipment Purchases

31 TAC §367.1

The repeal is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

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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Suzanne Schwartz

General Counsel

Texas Water Development Board

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The new section is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

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. Agricultural Water Conservation Loan Program

31 TAC §§367.40-367.51

The new sections are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

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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31 TAC §§367.41-367.50

The repeals are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

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. Agricultural Water Conservation Loan Program

31 TAC §§367.70-367.79

The repeals are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §17.903 related to Rules and Contracts for the Agricultural Water Conservation Bond Program, and §15.435 related to Guidelines for the Agricultural Soil and Water Conservation Program.

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Chapter 371. Drinking Water State Revolving Fund

The Texas Water Development Board (board) adopts amendments to §§371.2, 371.18, 371.20, 371.21, 371.23-371.26,

371.32, 371.35, 371.38, 371.40, 371.52, 371.71, 371.72 and 371.101. Sections 371.18, 371.24-371.26, and 371.38 are adopted with changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7730). Sections 371.2, 371.20, 371.21, 371.23, 371.32, 371.35, 371.40, 371.52, 371.71, 371.72 and 371.101 are adopted without changes and will not be republished.

The amendments implement the board's Drinking Water State Revolving Fund Program (DWSRF) and establish procedures for borrowers to follow in providing Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), Small Business Enterprises (SBE), and Small Business Enterprises in a Rural Area (SBRA) with opportunities to participate in contracts and procurements that are funded in whole or part with federal monies. Additionally, the amendments provide clarification to existing provisions of Chapter 371 that include deadlines for submittal of applications for assistance, information to be provided for establishing loan subsidies for disadvantages communities, and lending rates for certain borrowers. The amendments also correct grammatical errors and amend references to sections which have been repealed.

Section 371.2, Definition of Terms, is amended to replace "a" with "an" and to correct the form of a verb. Section 371.18, Capitalization Grant Requirements for Applicants, includes a new subsection which defines terms of the affirmative action program, including MBE, WBE, SBE and SBRA, and Affirmative Action Steps. The subsection further establishes the requirements that applicants for federal assistance must meet in order to afford MBE's, WBE's, SBE's and SBRA's the maximum practicable opportunity to participate in the DWSRF program. The amendments to Section 371.18 conform to the standards and requirements of the U.S. Environmental Protection Agency (EPA) and legal requirements that have been set for contracts and procurements funded from the capitalization grant awards.

Section 371.20, Intended Use Plan, is amended to make a grammatical correction. Section 371.21, Criteria and Methods for Distribution of Funds for Water System Improvements, is amended to clarify that although applicants have six months to receive a commitment for assistance, applications must be complete and ready for consideration within four months of being asked to submit an application. The section further clarifies that these time lines apply during subsequent funding cycles, after projects are re-ranked and new applications are solicited. The section is further amended to clarify that the executive administrator will notify the potential applicants and that remaining funds will be made available to other population classes.

Section 371.23, Criteria and Methods for Distribution of Funds for Source Water Protection, is amended to correct "applicants" with the word "applications." Section 371.24, Disadvantaged Community Program through Loan Subsidies, is amended to clarify the formula for calculating the adjusted median household income. Further, the section informs applicants that the necessary information in the calculation will be provided by the board during the solicitation for applications process. The section also corrects cites to rule subsections and headings.

Section 371.25, Criteria and Methods for Distribution of Funds for Disadvantaged Communities, is proposed for amendment to clarify that funds are to be "made available" rather than "reserved" and that the funds will be "distributed" rather than "reserved." The section is further amended to clarify deadlines

for the submission of applications during each of the funding cycles. The section further clarifies that applications which have not received a commitment within the prescribed time will be returned to the applicant.

Section 371.26, Criteria and Methods for Distribution of Funds from Community/ Noncommunity Water Systems Financial Assistance Account, is amended to correct grammatical errors and to clarify time lines that applicants must follow to submit an application and receive a commitment for financial assistance during the initial and subsequent funding cycles.

Section 371.32, Required Application Information, is amended to clarify application requirements for "eligible Nonprofit noncommunity" applicants that are also eligible public applicants and for "eligible Nonprofit noncommunity" applicants that are not eligible public applicants. The section also clarifies "consultant services" as financial advisory, engineering, and bond counsel. Section 371.35, Required Environmental Review and Determinations, corrects the term "loan agreement" by replacing it with "loan commitment."

Section 371.38, Pre-Design Funding Option, is amended to correct a cite to a section of the rules. A change was made to the proposed text to correct the reference.

Section 371.40, Promissory Notes and Loan Agreements with Nonprofit Water Supply Corporations, Eligible Nonprofit Noncommunity Water Systems, and Eligible Private Applicants, is amended to state that only Nonprofit noncommunity water systems that are not eligible public applicants may issue a promissory note and enter into a loan agreement. The section clarifies that a governmental applicant that is authorized to issue bonds may not enter into a loan agreement. The section further restates to clarify that the executive administrator may waive the requirement of a financial advisor for applicants that use the promissory note and loan agreement method of financing.

Section 371.52, Lending Rates, is amended to refer nonprofit noncommunity borrowers that issue tax-exempt obligations and that operate community/noncommunity water systems to the subsections that address their lending rates.

Section 371.71, Loan Closing, is amended to clarify that refinancing of construction loans pertains for a constructed project. The section further adds that the applicant shall submit any additional information deemed necessary by the executive administrator.

Section 371.72, Release of Funds, simplifies required application materials by decreasing the required number of copies of each construction contract.

Section 371.101, Responsibilities of Applicant, is amended to clarify the time period (adoption to 3 years after project completion) from which implementation and status of the water conservation program must be reported.

Comments were received from the U.S. Environmental Protection Agency (EPA). EPA commented that at §371.18 (a), "Environmental Justice, Executive Order 12898" should be added to the list of federal crosscutting requirements.

Response: The Board agrees and the requirement has been added to the list.

EPA further comments that §371.18(b)(1)(B) should be clarified to indicate that the agreement is between the State and the DWSRF applicant, not the EPA.

Response: The Board agrees that clarification is needed and "EPA recipient" has been replaced with "DWSRF recipient".

EPA notes that at §371.18(b)(3) the reference to EPA policy does not mention the legal requirements that are placed on both agencies.

Response: The Board agrees, and the sentence is revised to read: Pursuant to EPA policy and legal requirements, a goal oriented system has been established to promote MBE and WBE participation on all projects receiving funds from the DWSRF.

EPA further comments that in §371.18(b)(3)(C-D), the word "may" should be replaced with the word "must" to indicate that in all procurements, the use of the six affirmative action steps is not an option but a requirement.

Response: The Board agrees that the use of the six affirmative action steps is a requirement. The sentences have been adjusted to reflect the mandatory basis of the use of the six affirmative steps in procurements.

Additionally, EPA notes that at §371.24(b)(7), the sentence stating the calculation of the adjusted median household should include the word "current" before the first reference to "Texas Consumer Price Index" in order to help indicate that the multiplication factor and division factor are independent factors from two individual years.

Response: The Board agrees that the stated calculation needs clarification. The sentence has been adjusted to read: The adjusted median household income is calculated as the 1990 annual median household income multiplied by the current Texas Consumer price index divided by the 1990 Texas Consumer Price Index.

EPA comments that there appear to be inconsistencies in §371.25(e) and (h) and in §371.26(f) and (i) in the time frames after which the executive administrator will return incomplete applications.

Response: The Board agrees that there are inconsistencies. Certain sentences appear to allow a 16-month period of time, instead of the intended 12-month period of time, for disadvantaged communities and community/noncommunity water systems to receive a financial commitment. Section 371.25(e) and (h) and §371.26 (f) and (i) have been corrected to show a time frame of four months instead of six months from the date of invitation to submit applications, and there is a clarification with respect to the executive administrator returning incomplete applications after a given period of time.

Subchapter A. Introductory Provisions

31 TAC §371.2

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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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Suzanne Schwartz
General Counsel
Texas Water Development Board
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Subchapter B. Program Requirements

31 TAC §§371.18, 371.20, 371.21, 371.23-371.26

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

§371.18. Capitalization Grant Requirements for Applicants.

(a) All projects which receive assistance from the fund under this chapter shall satisfy the following federal requirements as they apply:

- (1) National Environmental Policy Act of 1969, PL 91-190;
- (2) Archeological and Historic Preservation Act of 1974, PL 93-291;
- (3) Clean Air Act, 42 U.S.C. 7506(c);
- (4) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.;
- (5) Coastal Zone Management Act of 1972, PL 92-583, as amended;
- (6) Endangered Species Act, 16 U.S.C. 1531, et seq.;
- (7) Executive Order 11593, Protection and Enhancement of the Cultural Environment;
- (8) Executive Order 11988, Floodplain Management;
- (9) Executive Order 11990, Protection of Wetlands;
- (10) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.;
- (11) Fish and Wildlife Coordination Act, PL 85-624, as amended;
- (12) National Historic Preservation Act of 1966, PL 89-665, as amended;
- (13) Safe Drinking Water Act, §1424(e), PL 92-523, as amended;
- (14) Wild and Scenic Rivers Act, PL 90-542, as amended;
- (15) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;
- (16) Section 306 of the Clean Air Act and §508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;
- (17) Age Discrimination Act, PL 94-135;
- (18) Civil Rights Act of 1964, PL 88-352;
- (19) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act;

(20) Executive Order 11246, Equal Employment Opportunity;

(21) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise;

(22) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);

(23) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646;

(24) Executive Order 12549, Debarment and Suspension;

(25) The Wilderness Act, 16 U.S.C. 1131 et seq.; and

(26) Environmental Justice, Executive Order 12898.

(b) Requirements for Minority Business Enterprise/Women's Business Enterprise/Small Business Enterprise/Small Business Enterprise in a Rural Area.

(1) Definitions. For the purposes of this subsection the following definitions shall apply.

(A) Construction - Notwithstanding the provisions of §371.2 of this title (relating to Definition of Terms), any contract or agreement to provide the building, erection, alteration, remodeling, improvement or extension of a DWSRF funded project.

(B) Contract - A written agreement between a DWSRF recipient and another party and any lower tier agreement for equipment, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.

(C) Equipment - Tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

(D) MBE - A Minority Business Enterprise, a business concern that is:

(i) at least 51% owned by one or more minority individuals who are U. S. Citizens, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority individuals who are U. S. Citizens; and

(ii) whose daily business operations are managed and directed by one or more of the minority owners. Minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans or other groups whose members have been found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under Executive Order 11625, §5.

(E) Prime contract - Any contract, agreement or other action entered into by a DWSRF applicant to procure construction, services, equipment or supplies.

(F) SBE - A Small Business Enterprise, a business concern, including its affiliate, that is independently owned and operated, not dominant in the field of operation in which it operates, and that is qualified as a small business by the Small Business Administration.

(G) SBRA - A Small Business Enterprise in a Rural Area, a small business concern that is located and conducts its principal operations in a "non-metropolitan county" as delineated by the Small Business Administration.

(H) Services - A contractor's time and efforts which do not involve delivery of a specific end item other than documents (e.g. reports, design drawings, specifications, etc.).

(I) Subcontract - Any contract, agreement or other action to procure construction, services, equipment or supplies between a prime contractor and any other business to supply such goods or services for a DWSRF financial assistance action.

(J) Supplies - All tangible personal property other than equipment.

(K) WBE - A Women's Business Enterprise, a business concern that is:

(i) at least 51% owned by one or more women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more women; and

(ii) whose daily business operations are managed and directed by one or more of the women owners.

(2) Affirmative action steps - Those steps necessary by the applicant and the prime contractor to ensure that MBEs, WBEs, SBEs and SBRA are utilized when possible including:

(A) placing qualified MBEs, WBEs, SBEs and SBRA on solicitation lists;

(B) assuring that MBEs, WBEs, SBEs and SBRA are solicited whenever they are potential sources;

(C) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBEs, WBEs, SBEs and SBRA;

(D) establishing delivery schedules, where the requirement permits, which encourage participation by MBEs, WBEs, SBEs and SBRA;

(E) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(F) requiring the prime contractor, if subcontracts are to be let, to take the affirmative action steps listed in subparagraphs (A) - (E) of this paragraph.

(3) Requirements for Applicants.

(A) Pursuant to EPA policy and legal requirements, a goal oriented system has been established to promote MBE and WBE participation on all projects receiving funds from the DWSRF. In addition, it is the intent that SBEs and SBRA be afforded the maximum practicable opportunity to participate in EPA awarded financial assistance programs.

(B) Prior to receiving a loan commitment the applicant will submit an affirmative action plan on forms provided by the board. The plan shall be signed by the authorized representative of the applicant and shall contain estimates and/or actual amounts of MBE and WBE participation in the categories of construction, services, equipment, or supplies. Copies of any existing or proposed MBE and WBE contracts should be attached.

(C) In all procurements, the applicant will undertake a good faith effort to attract and utilize MBE, WBE, SBE and SBRA participation. This must include, but not be limited to taking the six affirmative action steps.

(D) In all procurements, the applicant will include provisions in prime contracts requiring the prime contractors to submit an affirmative action plan, and to undertake a good faith effort to attract and utilize MBEs, WBEs, SBEs and SBRA, through subcontracts. This must include but not be limited to taking the

affirmative action steps described in paragraph (2)(A) - (E) of this subsection.

(E) As a condition to the release of funds or at any other time contracts or subcontracts are entered into, the applicant will report MBE and WBE participation and will provide documentation of good faith efforts on forms provided by board staff.

(F) The applicant and the prime contractor(s) will maintain all records documenting required good faith efforts.

§371.24. Disadvantaged Community Program through Loan Subsidies.

(a) (No change.)

(b) Definition of Disadvantaged Community.

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

(7) The adjusted median household income is calculated as the 1990 annual median household income multiplied by the current Texas Consumer Price Index divided by the 1990 Texas Consumer Price Index. The necessary information will be provided by the board to the applicant during the solicitation process.

(8) (No change.)

(c)- (d) (No change.)

(e) Term of Loan. Notwithstanding the provisions of §371.12 (1)(B) of this title (relating to Uses of the Fund), the board may extend the term of a loan made through the Disadvantaged Community Account of the DWSRF if the extended term terminates not later than the date that is 30 years after the date of project completion and does not exceed the expected design life of the project.

(f) - (g) (No change.)

§371.25. Criteria and Methods for Distribution of Funds for Disadvantaged Communities.

(a) The board will determine annually amount of capitalization grant funds to be made available for projects for disadvantaged communities and will include this information in the intended use plan, provided however that no more than 30% of any capitalization grant can be so distributed.

(b) (No change.)

(c) After projects have been ranked, a funding line will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within four months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the disadvantaged community account after the four month period has expired without affecting the priority status of the application. Applicants for funding from the disadvantaged community account will be allowed 12 months after submittal of an application to receive a loan commitment.

(d) Applicants for funding from the disadvantaged community account above the funding line which do not submit applications

before the four month deadline will be moved to the bottom of the priority list in priority order.

(e) If after four months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications which did not receive a commitment and move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(f) (No change.)

(g) Projects above the funding line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the disadvantaged community account of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within four months of the second date of notification of the availability of funds. Applicants for funding from the disadvantaged community account will be allowed 12 months after submittal of an application to receive a loan commitment.

(h) If, after four months of the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund completed applications will be made available for the next fiscal year, subject to the limitations of subsection (a) of this section.

(i) If, at any time during either six month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding from the disadvantaged community account in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four months to submit an application. Applications for funding from the disadvantaged community account will be allowed 12 months after submittal of an application to receive a loan commitment.

(j) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within 12 months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list and the application returned to the applicant.

§371.26. Criteria and Methods for Distribution of Funds from Community/ Noncommunity Water Systems Financial Assistance Account.

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

(c) After the executive administrator determines the amount of funds available for community/noncommunity water systems financial assistance account from capitalization grant reserves, state match, or any other sources, the funds available from this account will be applied to the list of systems that serve fewer than 10,000 persons and the list of systems that serve 10,000 and over persons in accordance with §371.21(a) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). All projects will be listed in priority ranking order as determined by §371.19 of this title (relating to Rating Process). The projects of eligible private applicants or eligible NPNC applicants assigned identical rating scores will be listed in alphabetical order. In the event

that one or more projects of eligible private applicants or eligible NPNC applicants have rating scores identical to the rating scores of applicants that are not disadvantaged communities as defined in this chapter, such private or NPNC applicants will be listed above the non-disadvantaged communities on the priority list. In the event that one or more projects of eligible private applicants or eligible NPNC applicants have rating scores identical to the rating scores of applicants that are disadvantaged communities as defined in this chapter, such private or NPNC applicants will be listed below the disadvantaged communities on the priority list.

(d) After projects have been ranked, a funding line will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, eligible private applicants and eligible NPNC applicants above the funding line must submit applications for assistance, as defined, within four months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the community/noncommunity water system financial assistance account after the four month period has expired without affecting the priority status of the application. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed six months after submittal of an application to receive a loan commitment.

(e) Applicants for funding from the community/noncommunity water system financial assistance account above the funding line which do not submit applications before the four month deadline will be moved to the bottom of the priority list in priority order.

(f) If after four months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for community/noncommunity water systems financial assistance account or all available funds are not committed, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(g) Following the re-ranking of the priority list, a line will again be drawn not to exceed the amount of funds available, in accordance with the criteria of subsection (c) of this section.

(h) Projects above the funding line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the community/noncommunity water system financial assistance account of the availability of funds and will invite the submittal of applications. In order to receive funding, the eligible private applicants or eligible NPNC applicants with projects above the funding line must submit applications for assistance, as defined within four months of the date of notification of the availability of funds. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed six months after submittal of an application to receive a loan commitment.

(i) If, after four months from the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available for community/non-

community water systems or all available funds are not committed, the executive administrator will return any incomplete applications.

(j) If, at any time during either six month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four months to submit an application.

(k) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within six months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list and the application will be returned to the applicant.

This agency hereby certifies that the 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 18, 1998.

TRD-9814803
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-7981



Subchapter C. Application for Assistance

31 TAC §§371.32, 371.35, 371.38, 371.40

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

§371.38. *Pre-Design Funding Option.*

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

(c) Applications for pre-design funding must include the following information:

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

(4) all information required in §371.32 of this title (relating to Required Application Information), and

(5) (No change.)

(d)-(f) (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 18, 1998.

TRD-9814804
Suzanne Schwartz
General Counsel
Texas Water Development Board

Effective date: October 8, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-7981



Subchapter D. Board Action on Application

31 TAC §371.52

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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 18, 1998.

TRD-9814805
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-7981



Subchapter F. Prerequisites to Release of Funds

31 TAC §371.71, §371.72

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

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 18, 1998.

TRD-9814806
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-7981



Subchapter H. Post Building Phase

31 TAC §371.101

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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 18, 1998.

TRD-9814807
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 1998
Proposal publication date: July 31, 1998
For further information, please call: (512) 463-7981



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 16. Commercial Driver's License

Subchapter A. Licensing Requirements, Qualifications, Restrictions, and Endorsements

37 TAC §16.12

The Texas Department of Public Safety adopts an amendment to §16.12, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8028) and will not be republished.

The justification for this section will be to include an additional exempt group of drivers under the commercial driver's license law.

Subsection (c) definition is amended to exempt drivers of portable tanks having a rated capacity under 1,000 gallons from having to obtain a CDL.

One comment was received from Scott Fisher of the Texas Petroleum Marketers and Convenience Stores. Mr. Fisher only requested clarification that this amendment did not further restrict the use of portable tanks by farmers.

The amendment is adopted pursuant to Texas Transportation Code, §522.005 which provides the Texas Department of Public Safety with the authority to adopt rules necessary to carry out the Texas Driver's License Act, Texas Commercial Driver's License Act, and the Federal Commercial Motor Vehicle Safety Act of 1986.

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 16, 1998.

TRD-9814678
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: October 6, 1998
Proposal publication date: August 7, 1998

For further information, please call: (512) 424-2890

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter D. Resources

40 TAC §15.430

The Texas Department of Human Services (DHS) adopts an amendment to §15.430 without changes as to the proposed text published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8033) and will not be republished.

The amendment is justified because it will mean that clients will not be penalized because of incorrect application of policy.

The amendment will function by clarifying the definition of disabled child for transfer of assets purposes.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814826

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: December 1, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 438-3765

◆ ◆ ◆
Part XX. Texas Workforce Commission

Chapter 815. Unemployment Insurance

40 TAC §§815.1, 815.6, 815.7, 815.9, 815.14, 815.16, 815.17, 815.20, 815.22, 815.31, 815.32

The Texas Workforce Commission (Commission) adopts amendments to §§815.1, 815.6, 815.7, 815.9, 815.14, 815.16, 815.17, 815.20, 815.22, 815.31, and 815.32, concerning unemployment insurance, without changes to the proposed text as published in the July 31, 1998 issue of the *Texas Register*

(23 TexReg 7759), which volume was incorrectly published as 24. The adopted text will not be republished in this issue of the *Texas Register*.

The purpose of the amendments is to update references within the rules contained in Chapter 815 relating to Unemployment Insurance by making technical changes to the rules. Generally, the technical changes include changing the name of the Commission from the "Texas Employment Commission" to the "Texas Workforce Commission" or "commission" and similar non-substantive changes for conformity with Texas Labor Code, Title 4, Subtitle A (the Act) and Subtitle B.

No comments were received on the rules.

The amendments are adopted under Texas Labor Code, §§301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Texas Labor Code, Title 4.

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 16, 1998.

TRD-9814645

J. Ferris Duhon

Assistant General Counsel

Texas Workforce Commission

Effective date: October 6, 1998

Proposal publication date: July 31, 1998

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

◆ ◆ ◆
40 TAC §815.8

The Texas Workforce Commission (Commission) adopts amendments to §815.8, concerning revocation of written authority to conduct business with the Commission on behalf of an employer, without changes to the proposed text as published in the July 24, 1998 issue of the *Texas Register* (23 TexReg 7545). The adopted text will not be republished in this issue of the *Texas Register*.

The purpose of the amendments is to allow a third party to revoke the written authority to conduct business with the Commission on behalf of an employer. The adopted amendments, once effective, provide that once an employer has given a third party written authority to conduct business with the Commission on their behalf, either the employer or the third party may revoke the written authority.

No comments were received on the amendments.

The amendments to §815.8 are adopted under Texas Labor Code, §301.061, which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9814660

J. Ferris Duhon

Assistant General Counsel
Texas Workforce Commission
Effective date: October 6, 1998

Proposal publication date: July 24, 1998
For further information, please call: (512) 463-8812



== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

General Land Office

Title 31, Part I

In compliance with Article IX, §167, of the 1997 Appropriations Act, and in accordance with a previously published Agency Rule Review Plan and Notice of Intent to Review filing (22 TexReg 11831), the General Land Office has reviewed §1.3, (relating to Fees).

The agency's reasons for adopting the rules contained in this section continue to exist.

Comments on this rule review conclusion may be submitted to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 p.m., November 2, 1998.

TRD-9814794
Garry Mauro
Commissioner
General Land Office
Filed: September 18, 1998



The following is offered in compliance with Article IX, §167, of the Appropriations Act. In accordance with a previously published Agency Rule Review Plan and Notice of Intent to Review filing, the General Land Office (GLO) has reviewed Chapter 9 of Title 31 of the Texas Administrative Code with the exceptions of §§9.4 and 9.7.

The agency's reasons for adopting these rules in Chapter 9 continue to exist. However, largely for purposes of reorganization, clarity, and updating, the GLO and the School Land Board have determined that changes should be made to the rules. Therefore, and in lieu of reoption, the GLO will propose to repeal of all of Chapter 9 (except §9.4 and §9.7) and to replace them with a new Chapter 9 (except §9.4 and §9.7). This proposed repeal and new Chapter 9 rules will be published for comment in the Texas Register at a later date.

Comments on this rule review and the finding that the reasons for adopting Chapter 9 of Title 31 of the Texas Administrative Code (except §9.4 and §9.7) continue to exist may be submitted to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700

North Congress, Room 626, Austin, Texas 78701-1495. The deadline for comments is 5:00 p.m. November 2, 1998.

TRD-9814902
Garry Mauro
Commissioner
General Land Office
Filed: September 21, 1998



Adopted Rule Reviews

Texas Department of Human Services

Title 40, Part I

The Texas Department of Human Services files this notice of intention to review Title 40 TAC, Chapter 4 (relating to Medical Programs - Children and Pregnant Women), Chapter 5 (relating to Medicaid Programs for Aliens), Chapter 6 (relating to Disaster Assistance Program), Chapter 7 (relating to Refugee Cash Assistance Program), Chapter 9 (relating to Refugee Social Services), Chapter 11, Subchapter A, (relating to the Food Distribution Program), Chapter 12 (relating to Special Nutrition Program), and Chapter 13 (relating to Title IV-4 Emergency Assistance Program) pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. Chapter 11, Subchapter B (relating to the Texas Commodity Assistance Program), is not presented for review because it was published as a new rule, in its entirety, after September 1, 1997.

As required by §167, the Department will accept comments regarding whether the reason for adopting each of the rules in 40 TAC, Chapters 4, 5, 6, 7, 9, 11, 12, and 13 continues to exist. The deadline for the comments is 30 days after this publication in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review Chapters 4, 5, 7, and 13 should be directed to Rita King, Eligibility Services, Texas Department of Human Services W-312, P.O. Box 149030, Austin, Texas 78714-9030, or at (512) 438-4148.

Any questions or written comments pertaining to this notice of intention to review Chapter 6 should be directed to Dennis McCudden, Emergency Services Programs, Texas Department of Human Services

Y-950, P.O. Box 149030, Austin, Texas 78714-9030, or at (512) 483-3909.

Any questions or written comments pertaining to this notice of intention to review Chapter 9 should be directed to Liz Cruz- Garbutt, Office of Immigration and Refugee Affairs, Texas Department of Human Services W-230, P.O. Box 149030, Austin, Texas 78714-9030, or at (512) 438-5440.

Any questions or written comments pertaining to this notice of intention to review Chapter 11, Subchapter A, and Chapter 12 should be directed to Keith Churchill, Special Nutrition Programs, Texas Department of Human Services Y-906, P.O. Box 149030, Austin, Texas 78714-9030, or at (512) 467-5837. The Department anticipates that the result of the review of these rules will be the submission of proposed rules to incorporate changes necessary to simplify and improve the effectiveness of the rules, and invites comments on any aspect of these rules.

TRD-9814827
Glenn Scott
General Counsel
Texas Department of Human Services
Filed: September 18, 1998

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Texas Motor Vehicle Board

Title 16, Part VI

The Texas Motor Vehicle Board of the Texas Department of Transportation readopts 16 TAC Chapter 103, General Rules relating to licensing, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. Notice of the proposed review was published in the July 24, 1998 issue of the *Texas Register* (23 TexReg 7599). The Board finds that the reasons for adopting Chapter 103, General Rules relating to licensing, continue to exist.

No comments were received related to the rule review requirement as to whether the reasons for adopting the rules continue to exist. As a result of the review process, the Board will propose amendments to §§103.1, 103.3, 103.5, 103.6, 103.7, 103.8, 103.12 and 103.13 and publish the proposed amendments in a future issue of the *Texas Register* in accordance with the Administrative Procedure Act.

These rules are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

TRD-9814896
Brett Bray
Director
Texas Motor Vehicle Board
Filed: September 21, 1998

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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.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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

Monday, September 28, 1998, 1:30 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. 473-98-1637 Application of Houston Lighting and Power Company for Approval of Preliminary Integrated Resource Plan (PUC Docket No. 19270).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: September 17, 1998, 3:13 p.m.

TRD-9814766



Texas Alcoholic Beverage Commission

Monday, September 28, 1998, 1:30 p.m.

5806 Mesa Drive, Suite 185

Austin

AGENDA:

1:30 p.m.-Call to order.

Convene in open meeting.

Announcement of executive session.

1. Executive session:

a. briefing regarding operations of the general counsel's office
continue open meeting.

2. Take action, including a vote, if appropriate on topics listed for discussion under executive session.

3. Recognition of agency employees with 20 or more years of service.

4. Approval of minutes of July 27, 1998 and August 24, 1998 meetings; discussion, comment, possible vote.

5. Administrator's report.

6. Consider acceptance of four 433 IBM computers from the South Texas Project Nuclear Operating Company; discussion, comment, possible vote.

7. Consider approval of agency's Affirmative Action Plan; discussion, comment, possible vote.

8. Consider request to amend 16 TAC §45.46 to allow wine to be made from fermented raisins; discussion, comment, possible vote. (Application)

9. Presentation of seller-server training program; discussion, comment, possible vote.

10. Public comment.

11. Adjourn.

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, 512/206-3217.

Filed: September 18, 1998, 8:43 a.m.

TRD-9814784



State Bar of Texas

Thursday, September 24, 1998, 9:30 a.m.

1109 North 77 Sunshine Strip

Harlingen

Texas Commission for Lawyer Discipline

AGENDA:

Public Session: Call to order/Swearing in of new members/Introductions/Approve Minutes.

Closed Session: Discuss appropriate action with respect to pending and potential litigation; pending evidentiary cases; special counsel assignments; review and discuss In Re: Hearing Before the District 4C Disciplinary Committee; and the performance of the General Counsel/Chief Disciplinary Counsel and staff.

Public Session: Discuss and authorize General Counsel to make, accept or reject offers or take other appropriate action with respect to matters discussed in closed session/Review, discuss and take appropriate action on: statistical and status reports of pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement; budget, operations, and duties of the Commission and the General Counsel's Office; possible implementation of policy regarding General Counsel/Chief Disciplinary Counsel and/or staff participating as a fact or expert witness in civil, criminal, or administrative cases; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/Discussion future meetings/Discuss other matters as appropriately come before the Commission/Public comment/Adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1/800/204-2222.

Filed: September 17, 1998, 2:02 p.m.

TRD-9814760



Friday, September 25, 1998, 9:00 a.m.

Sheridan Fiesta Hotel; Room Dunes A-D, 310 Padre Boulevard

South Padre

Board of Directors

AGENDA:

Call to order/Roll call/Invocation/Swearing in of new directors/consent Agenda/Items from the: President (general report, consider approval of special committees), Executive Director (general report, budget, amendment, to the bylaws of individual State Bar Committees, Sections and Divisions (State Judiciary Relations Committee) and Board Committees (Administrative Oversight Committee and Legislative Policy Committee)/Report from: General Counsel Oversight Committee (Closed Session: discuss personnel matters concerning General Counsel/Open Session: consider and take appropriate ac-

tion on matters discussed in closed session), Commission for Lawyer Disciplinary, General Counsel, Appeals-Grant Review Committee, Audit and Finance, Legal Service, Professional Development, Strategic Planning, Section Coordination, Individual Board Member(s), Judicial Section Liaison/Emerging Issues/Public comment/Adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1/800/204-2222.

Filed: September 16, 1998, 3:29 p.m.

TRD-9814723



Friday, September 25, 1998, 9:30 a.m.

Holiday Inn SunSpree, 100 Padre Boulevard

South Padre

Texas Commission for Lawyer Discipline

AGENDA:

Public Session: Call to order/Swearing in of new members/Introductions/Approve Minutes.

Closed Session: Discuss appropriate action with respect to pending and potential litigation; pending evidentiary cases; special counsel assignments; review and discuss In Re: Hearing Before the District 4C Disciplinary Committee; and the performance of the General Counsel/Chief Disciplinary Counsel and staff.

Public Session: Discuss and authorize General Counsel to make, accept or reject offers or take other appropriate action with respect to matters discussed in closed session/Review, discuss and take appropriate action on: statistical and status reports of pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement; budget, operations, and duties of the Commission and the General Counsel's Office; possible implementation of policy regarding General Counsel/Chief Disciplinary Counsel and/or staff participating as a fact or expert witness in civil, criminal, or administrative cases; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/Discussion future meetings/Discuss other matters as appropriately come before the Commission/Public comment/Adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1/800/204-2222.

Filed: September 17, 1998, 2:02 p.m.

TRD-9814759



Texas School for the Blind and Visually Impaired

Friday, September 25, 1998, 8:15 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees, Subcommittee on Finance and Audit

AGENDA:

Approval of minutes:

1. Approval of Minutes from May 21, 1998 meeting

Finance Issues:

1. Review of Legislative Budget Request

2. Review of Capital Construction Projects
3. Review of Year 2000 Conversion
4. Review Report on Donations
5. Review/Acceptance on Donation from Mrs. Leon Mathis
6. Review of Report on Curriculum Book Sales
7. Review Report on Investment
8. Review Report on Revenue
9. Review Report on Expenditures
10. Review Report on Contingency Fund

Audit Items:

1. Report form Internal Auditor

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, 512/206-9133.

Filed: September 16, 1998, 3:49 p.m.

TRD-9814726



Friday, September 25, 1998, 9:00 a.m.

1100 West 45th Street, Room 151

Austin

Board of Trustees, Subcommittee on Personnel

AGENDA:

Approval of minutes:

1. Approval of Minutes from May 21, 1998 meeting
2. Consideration of Approval of Human Resources Policies: DEC: Leaves of Absence
3. Consideration of Approval of New Contract Staff
4. Consideration of Approval of Teacher Appraisal System
5. Consideration of Superintendent's Performance Appraisal

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, 512/206-9133.

Filed: September 16, 1998, 4:06 p.m.

TRD-9814733



Friday, September 25, 1998, 9:00 a.m.

1100 West 45th Street, Room 110

Austin

Board of Trustees, Subcommittee on Policies

AGENDA:

Approval of minutes:

1. Consideration of Approval of Minutes of May 21, 1998 Meeting
2. Review and discussion of policies on the September 25, 1998 Agenda:

DEC-Compensation and Benefits: Leaves and Absences (Amend)

FFG-Student Welfare: Child Abuse and Neglect (Amend)

FFGA-Student Welfare: Improper Child Care Practice (Adopt)

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, 512/206-9133.

Filed: September 16, 1998, 2:54 p.m.

TRD-9814717



Friday, September 25, 1998, 10:00 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees

AGENDA:

Approval of minutes:

1. Approval of Minutes from July 14, 1998 Board Meeting; Consideration of approval TSBVI Organizational Chart; Consideration of Approval of Noal County Farm Contracts; Consideration of Approval of Consultative Services Contract over \$5,000, Consideration of Approval of a Teacher Appraisal System

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, 512/206-9133.

Filed: September 16, 1998, 3:49 p.m.

TRD-9814725



Coastal Coordination Council

Wednesday, September 30, 1998, 1:30 p.m.

Texas A&M University, Corpus Christi Campus, 6300 Ocean Drive, National Resources Building, Room 1003

Corpus Christi

Executive Committee

AGENDA:

Contact: Janet Fatheree, 1700 North Congress, Room 617, Austin, Texas 78701-1495, 512/463-5385.

Filed: September 21, 1998, 9:8 a.m.

TRD-9814895



State Board of Dental Examiners

Friday, October 9, 1998, 10:00 a.m.

SBDE Office, 333 Guadalupe, Tower 3 Suite 800

Austin

Dental Laboratory Certification Council

AGENDA:

I. Call to Order

II. Roll Call

III. Review and application of past minutes

IV. Discuss, review and consider proposed changes to the Dental Laboratory Renewal form

V. Discuss, review and consider the SBDE's packet of information to be mailed to newly registered dental laboratories

VI. Discuss and review status of laboratory complaints for the 3rd and 4th quarters.

VII. Public comments

VIII. Announcements

IX. Adjourn.

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: September 22, 1998, 3:25 p.m.

TRD-9814986



Texas County and District Retirement System

Wednesday, September 30, 1998, 8:30 a.m.

Hotel Garza

Post

Board of Trustees

AGENDA:

Review and Approve: Minutes of Meeting of June 5, 1998, Regular Board Meeting.

Consider and Act on: Applications for Service Retirement, Application for Disability, Retirement; Subdivision Applications for Retirement Participation; Financial Statements; Report of Investment Committee; Investment Consultant's Report; Report of Investment Officer; Investment Policy Revisions; Report of Investment Performance Analyst; Report of Fiduciary Counsel; KPMG Peat Marwick Compensation Survey; Report on Legal Counsel; Report of Actuary; Proposal to Recommend to Legislature Amendments to TCDRS Act; Proposed Administrative Rules.

Reports from: Chairman; Director

Set Date of Next Meeting. Adjourn.

Contact: Terry Horton, 901 Mopac Expressway South, Austin, Texas 78746, 512/328-8889.

Filed: September 22, 1998, 11:21 a.m.

TRD-9814971



State Employee Charitable Campaign

Thursday, September 24, 1998, 9:00 a.m.

American Cancer Society, 2433 Ridge Point Drive

Austin

State Policy Committee

AGENDA:

I. Call to order and discussion of the meeting agenda-Isaac Jackson

II. State Policy Committee Chair's Report-Isaac Jackson

III. State Advisory Committee Report-Joe LeBourgeois and Joe Way

IV. State Campaign Manager's Report-Laura Lucinda

V. Program Report-John Anderson

VI. Operations Report-Lisa Price

VII. Campaign Policy Development Task Force Report-Lisa Price

VIII. Public Comment Period (Please Note: Public Comment may include nay comments, regarding any agenda items or an item not on the agenda. The public is encourage to take advantage of this opportunity.)

IX. Review and adoption of the July 145, 1998 Meeting Minutes-Isaac Jackson

X. Consider and take action regarding Charity Applications Processes-Isaac Jackson

XII. Consider and take action regarding Next Meeting Date-Isaac Jackson

XIII. Adjourn

Please Note: Items may be taken out of sequence, and the Committee may go into executive session regarding any item on the agenda if permitted under Texas Government Code Annotated, Section 551.001 et seq.

Contact: Laura Lucinda, 823 Congress Avenue, #1103, Austin, Texas 78701, 512/478-6601.

Filed: September 16, 1998, 4:58 p.m.

TRD-9814744



Wednesday, September 30, 1998, 3:30 p.m.

Texas Tech Health Sciences Center, 1400 Wallace Boulevard

Amarillo

Local Employee Committee-Amarillo

AGENDA:

I. Review and approve minute of August 26, 1998 meeting-Dr. Lee Taylor

II. Update from State Campaign Manager-Millie Bingham

III. LCM update-Julie (Rios) Ontiveros

1. Pins/Tickets

2. Total to date

3. Final Luncheon

IV. Other-Dr. Lee Taylor

Contact: Laura Lucinda, 823 Congress Avenue, #1103, Austin, Texas 78701, 512/478-6601.

Filed: September 21, 1998, 2:36 p.m.

TRD-9814926



Finance Commission of Texas

Friday, October 9, 1998, 8:00 a.m.

William F. Aldridge Hearing Room, Finance Commission Building, 2601 North Lamar Boulevard

Austin

Audit Committee

AGENDA:

A. Review and approval of Minutes of the August 14, 1998, Audit Committee Meeting

B. Discussion of and vote to recommend approval to the Finance Commission of the Department of Banking's Investment Officer Report

C. Discussion of and vote to recommend approval to the Finance Commission of the Internal Auditor's Audit Plan for Fiscal Year Ending August 31, 1999.

Contact: Everett D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, 512/475-1300.

Filed: September 23, 1998, 8:23 a.m.

TRD-9814994



Friday, October 9, 1998, 9:00 a.m.

Finance Commission Building, 2601 North Lamar Boulevard

Austin

AGENDA:

The complete agenda is available on the World Wide Web at <http://www.banking.state.tx/us/exec/fcagenda.html>.

A. Review and approval of Minutes of the August 14, 1998, Finance Commission Meeting

B. Finance Commission Matters

1. Finance Commission Operations-Testimonies and Correspondence; Performance Reports; Legislative Activity; and Strategic Planning

2. Discussion of and Possible Vote on Finance commission Study Under Texas Finance Code §11.305(c)

3. Discussion of and Possible vote on the Settlement of State of Texas v. The Marmon Mok Partnership, et al.

4. Audit Committee Report: (A) discussion of and Vote to Approve the Department of Banking's Officer Report; (B) Discussion of and Vote to Approve the Internal Auditor's Audit Plan for Fiscal Year Ending August 31, 1999

5. Discussion of and Possible Vote to Approve Revised Fiscal Year 1999 Performance Targets for Commissioners

6. Discussion of and Possible Vote on a Joint Study with the Credit Union Commission of State Law Governing Financial Institutions in Texas as Required by SB 358

C. Report from the Banking Department; Industry Status; Departmental Operations

1. Discussion of and Vote to Publish for Comment Amendment to §4.3

2. Discussion of and Vote to Publish for Comment Proposed New §19.51

3. Discussion of and Vote to Publish for Comment Proposed Amendments to §21.2

4. Discussion of and Vote to Publish for Comment Proposed New §§21.61, 21.64 and 21.67-21.76

5. Discussion of and Vote to Publish for Comment Proposed New §21.91 and §21.92

6. New Rule Adopted by Commissioner: Adopted §25.8, Concerning and Exemption from Regulation for the Sale of Certain Funeral Goods under Specified Conditions

D. Report from the Savings and Loan Department; Industry Status; Departmental Operations

E. Report from the Officer of Consumer Credit Commissioners; Industry Status; Departmental Operations

1. Discussion of and Vote to Public for Comment Proposed New §§1.701-1.708

2. Discussion of and Vote to Public for Comment the Proposed Repeal of 7 TAC §§1.94, 1.92, and 1.94

3. Discussion of and Vote to Public for Comment Proposed New §§1.751-1.761

F. Executive Session

Contact: Everett D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, 512/475-1300.

Filed: September 23, 1998, 8:24 a.m.

TRD-9814996



Texas Commission on Fire Protection

Tuesday-Wednesday, September 29-30, 1998, 9:00 a.m.

12675 Research Boulevard

Austin

Funds Allocation Advisory Committee

AGENDA:

I. Approval of minutes of April 7-9, 1998 meeting

II. Discussion and possible action on monitoring reports.

III. Discussion and possible action on applications for financial assistance.

IV. Discussion and possible action on amendments to the Rules of the Fire Department Emergency Program.

a. 37 TAC 461, General Administration

b. 37 TAC 463, Application Criteria

c. 37 TAC 465, Equipment, Facilities and Training Standards

V. Discussion and possible action on the interest rate to be used for loans under the Fire Department Emergency Program

VI. Discussion and possible action regarding changes to the application instructions, application, and contract for the Fire Department Emergency Program.

VII. Report from staff on the status of the Legislative Appropriations Request for FY 2000-2001.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7100.

Filed: September 16, 1998, 1:22 p.m.

TRD-9814704



Wednesday-Thursday, September 30-October 1, 1998, 9:00 a.m.

12675 Research Boulevard

Austin

Fire Fighter Advisory Committee

AGENDA:

1. Discussion and possible action concerning curriculum and requirements for basic structural fire protection personnel certification, including, but not limited to, revisions to meet latest edition of NFPA 1001 and NFPA 472.
2. Discussion and possible action on changes to Chapter 449, concerning Head of a fire Department.
3. New matters from committee members and the public to be placed on future meeting agenda.
4. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7100.

Filed: September 16, 1998, 1:22 p.m.

TRD-9814705



Wednesday-Friday, September 30–October 2, 1998, 9:00 a.m.

12675 Research Boulevard

Austin

Commission

AGENDA:

- I. The Budget and Strategic Plan subcommittees will meet at 9:00 a.m. on September 30 and may develop recommendations to be presented to the full commission;
- II. Executive session of the Commission pursuant to section 551.074, Texas Government Code, for discussion of personnel matters;
- III. Open session for further discussion/possible action regarding preceding agenda item;
- IV. Executive session under Section 551.071, Texas Government Code to discuss contemplated or pending litigation;
- V. Open Session for further discussion regarding preceding agenda item;
- VI. Report from strategic plan and budget subcommittees;
- VII. Discussion/possible action on matters from the Executive Director;
- VIII. Reports from Fire Service interest groups and agencies on matters relating to organizational purpose, functions, and objectives;
- IX. Informational report from Texas Forest Service on status of wildland fire in Texas in 1998;
- X. Discussion/possible action concerning reports by the Commission representative to the Texas Fire School Advisory Board and by representatives of the Texas Engineering Extension Service;
- XI. Matters referred from the Fund Allocation Advisory Committee;
- XII. Matters referred from the Fire Advisory Committee;
- XIII. Discussion/possible action on proposed rule review in accordance with Article IX, Section 167, House Bill 1, 75th Legislature;
- XIV. Discussion/possible action on reports from staff on the status of revisions to NFPA standards pertaining to self-contained from breathing apparatus, fire department occupational safety and health, protective clothing and fire fighter training.

XV. Discussion/possible action on acceptance of gifts to the Commission with a value in excess of \$500.00;

XVI. Discussion/possible action on individual requests for waiver of late fees or examination requirements;

XVII. New matters from the public not included in preceding agenda items may be discussed in future commission meetings.

XVIII. Discussion/possible action on future meeting dates.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7189

Filed: September 16, 1998, 1:22 p.m.

TRD-9814706



General Services Commission

Tuesday, September 29, 1998, 9:30 a.m.

Central Service Building, 1711 San Jacinto, Room 402

Austin

AGENDA:

- I. Call to order; II. staff, guests, and members present; III. approval fo minutes; IV. presentation of awards; V. consideration of the following agenda items: Item 1. consideration and potential action on proposed notice of intention to review Title 1, TAC, Part V, Chapter 126 concerning the Surplus and Salvage Property Program. Item 2. Consideration and potential action on the construction contract award to lowest responsible bidder fro Project No. 91-002J-303, renovation of Hobby Building Garage, fro \$131.790.00. Authorizing a change order fund for this project in the amount of \$7,500.00. Item 3. Consideration and potential action on resolution declaring expectation to reimburse expenditures with proceeds of bonds related tot he \$25,463,500 renovation of the John H. Reagan Sate Office building. Item 4. Consideration and potential action on request by the State Aircraft Pooling Board to supplement the Central Master Bidders List (CMBL) with a specialized needs bidders list for commodity codes 035 (aircraft) and (aircraft services). Item 5. Consideration and potential action on proposed increase to Change Order Contingency Fund from \$10,000 to \$21,000 for Project No. 94-014A-303, Installation of Backup Power and Miscellaneous Electrical Work, Banker-Hughes State Office building in Houston State Office Building in Houston, Texas. Item 6. Consideration and potential action on a resolution for the procurement of recycled, manufactured and environmentally sensitive products. Item 7. Program Issues: A. Construction Project Status Report on Existing Construction Projects. B. Need Analysis Final Report/GSC Information Resources Strategic Plan. VI. Executive Session to consider personnel matters pursuant to the provisions of Texas Government Code Section 551.074; VII. Executive session to consider the Status of the purchase of real property pursuant to the provisions of Texas Government Code Section 551.072; VIII. Executive Session to consult with Legal Counsel concerning pending litigation pursuant to the provisions of Texas Government Code Section 551.071; IX, Adjournment

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: September 18, 1998, 9:26 a.m.

TRD-9814791



Wednesday, September 30, 1998, 10:30 a.m.

One Texas Center, 500 Barton Springs Road, Conference Room 1325
Austin

Vendor Advisory Committee

AGENDA:

(I) Call to order; (II) Opening remarks and approval of minutes; (III) Report of Central Procurement Service's legislative agenda; (VI) Review of vendor complaint procedures (V) Update and Progress Report from Subcommittees; (VI) Update and Progress Report of Subcommittees; (VII) Open Discussion; (VIII) Adjourn.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: September 18, 1998, 8:43 a.m.

TRD-9814785



Friday, October 2, 1998, 9:00 a.m.

Central Services Building, 1711 San Jacinto, Room 200B

Austin

Uniform General Conditions Advisory Committee

AGENDA:

I. Call to order, Review and Accept Minutes; II. Consideration and Potential action on the Subcommittees I, II, and III Reports concerning revisions to the Uniform General Conditions Code; III. Discussion concerning quality of inspections; VI. Open Discussion; V. Adjourn.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: September 22, 1998, 8:02 a.m.

TRD-9814948



Office of the Governor

Wednesday, September 30, 1998, 1:00 p.m.

Texas State Capitol Extension E1.020, West 15th Street @ Congress Avenue

Austin

Inaugural Endowment Fund Committee

AGENDA:

I. Call to order-Mrs. Laura Bush, Chair Approval of minutes October 22, 1997

II. Review of report submitted by previous grant recipients

III. Update on funds available for distribution

IV. Discussion and possible action on requests for funds

V. Committee action authorizing expenditures from the Inaugural Endowment Fund by Mrs. Bush

VI. Adjournment

Contact: Pam Willeford, 2511 McCullough, Austin, Texas 78703, 512/473-8887 or fax 512/477-6130.

Filed: September 21, 1998, 10:56 a.m.

TRD-9814901



Texas Health Care Information Council

Thursday, September 24, 1998, 9:00 a.m.

Brown-Heatly Building Room 3501, 4900 North Lamar Boulevard

Austin

Health Maintenance Organization Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's Health Maintenance Organization (HMO) Technical Advisory Committee will convene in open session, deliberate, and possibly take formal action on the following items: Call to order; Approval of minutes; Discussion on issues surrounding aggregation of service areas; Discussion of standardization of data submission tool including costs issues; Discussion of audited data submission and correction process; Discuss the 1999 Medicaid/Medicare reporting measures; Other business; and, Adjourn.

Contact: Jim Loyd, 4900 North Lamar Boulevard, OOL-3407, Austin, Texas 78751, 512/424-6490 or fax 512/424-6491.

Filed: September 17, 1998, 8:20 a.m.

TRD-9814746



Texas Department of Health

Monday, September 28, 1998, 1:30 p.m.

Conference Room 716, Texas Health and Human Services Center, 1351 East Bardin Road

Arlington

Medicaid Managed Care Regional Advisory Committee for Tarrant Service Area

AGENDA:

The committee will meet to discuss and possibly act on: the committee's mission; STAR Managed Care Program; enrollment process; round table discussion on issues of concern; and setting the date, time and agenda for the next committee meeting.

For ADA assistance, call Suzzanna C. Currier 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: Charles D. Johnson, 1351 East Bardin Road, Arlington, Texas 817/264-4438.

Filed: September 18, 1998, 8:57 a.m.

TRD-9814786



Saturday, October 3, 1998, 9:15 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Executive Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: rules (25 TAC Chapter 289) (proposed repeal of §289.81 Memorandum of Understanding on In Situ Uranium Mining between the Texas Department of Health and the Texas Department of Water Resources; proposed repeal of §289.5 Texas Atomic Energy Commission (AEC) Regulatory Transfer Agreement; proposal of §289.205 Hear-

ing and Enforcement Procedures; and adoption of §289.101 Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding Radiation Control Functions); a resolution by the Texas Radiation Advisory Board on the proposed pit disassembly and conversion facility at Pantex; discussion items not requiring action; and public comment.

To request an accommodation under the ADA assistance, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, 512/834-6688.

Filed: September 23, 1998, 11:27 a.m.

TRD-9815009



Saturday, October 3, 1998, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Medical Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: rules (25 TAC Chapter 289.230 Certification of Mammography Systems); practice of orthodontists making radiographs of hands (review and comment); appointment of subcommittee for review of Nuclear Regulatory Commission (NRC) 10 CFR Part 35 rules on medical uses of by product material and proposed revisions of NRC's medical use policy statement; discussion items not requiring action; and public comment.

To request an accommodation under the ADA assistance, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, 512/834-6688.

Filed: September 23, 1998, 11:27 a.m.

TRD-9815010



Saturday, October 3, 1998, 11:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Waste and Industrial Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: recommendation for final adoption by the Texas Natural Resource Conservation Commission National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart R, National Emissions Standards for Radom Emissions from Phosphogypsum stacks (30 TAC, Chapter 113.55; Rules (25 TAC, Chapter 289) (proposed repeal of §289.125 Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste; proposals of §289.255 Radiation Safety Requirements and Licensing and Registration Procedures for Indus-

trial Radiography); discussion items not requiring action; and public comment.

To request an accommodation under the ADA assistance, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, 512/834-6688.

Filed: September 23, 1998, 11:27 a.m.

TRD-9815011



Saturday, October 3, 1998, 11:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Naturally Occurring Radioactive Material (NORM) Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: proposal of rules at 25 TAC, §289.259 "Licensing of Naturally Occurring Radioactive Material (NORM); discussion items not requiring action; and public comment.

To request an accommodation under the ADA assistance, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, 512/834-6688.

Filed: September 23, 1998, 11:27 a.m.

TRD-9815012



Saturday, October 3, 1998, 1:15 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board

AGENDA:

The board will introduce guests and will discuss and possibly act on: approval of the minutes of the last meeting; election of officers; update on budget and Sunset Commission review; Waste and Industrial Committee report (recommendation for final adoption by the Texas Natural Resource Conservation Commission National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart R, National Emissions Standards for Radom Emissions from Phosphogypsum stacks (30 TAC, Chapter §113.55); proposed repeal of §289.125 Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste; proposals of §289.255 Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography); Medical Committee report (proposal of 25 TAC §289.230 Certification of Mammography Systems; practice of orthodontists making radiographs of hands (review and comment) and appointment of subcommittee for review of Nuclear Regulatory Commission (NRC) 10 CFR Part 35 rules on medical use of by products material and proposed revisions of NRC's medical

use policy statement); Naturally Occurring Radioactive Material (NORM) Committee report (proposal of 25 TAC §289.259 Licensing NORM); Executive Committee report (proposed repeal 25 TAC §289.81 Memorandum of Understanding on In Situ Uranium Mining between the Texas Department of Health and the Texas Department of Water Resources; proposed repeal of §289.5 Texas Atomic Energy Commission (AEC) Regulatory Transfer Agreement; proposal of §289.205 Hearing and Enforcement Procedures; and adoption of §289.101 Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding Radiation Control Functions); a resolution by the Texas Radiation Advisory Board on the proposed pit disassembly and conversion facility at Pantex); program reports (Texas Low-Level Radioactive Waste Disposal Authority; Texas Department of Health, Bureau of Radiation Control; Texas Natural Resource Conservation Commission; and the Railroad Commission of Texas); discussion items not requiring action; public comment; and setting future meeting dates.

To request an accommodation under the ADA assistance, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD 512/458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, 512/834-6688.

Filed: September 23, 1998, 11:27 a.m.

TRD-9815013



Center for Rural Health Initiatives

Tuesday, September 29, 1998, 10:00 a.m.

Center for Rural Health Initiatives, Southwest Tower Building, 211 East 7th Street, 7th Floor Conference Room

Austin

Executive Committee Meeting

AGENDA:

I. Call to order

II. Welcome, introductions, and reports by acting chair

III. Approval of minutes from June 4, 1998 meeting

IV. Approval of minutes from July 17, 1998, meeting

V. Executive Session to deliberate the employment and the dismissal of the Executive Director

VI. Action on the Employment and the Dismissal of the Executive Director

VII. Report of Executive Director (Interim)

Including status of: a. Strategic Plan and b. Personnel Positions

VIII. Status of Sunset Commission review process

IX. Discussion and possible action on Memorandum of Understanding (MOU) with Texas Department of Health

X. Status of Rural Community Health System (RCHS) collaboration

XI. Discussion and possible action on proposed rules (25 TAC Chapter 500, Subchapter A, Policy and Procedures)

XII. Election of officers

XIII. Discussion on process to evaluate performance of current Center staff

Presentation by TDH Human Resources staff on possible staff

XIV. Presentation of Community Infrastructure Development Project by

C. Alvin Jones, MD, President Texas Rural Health Association

XV. Advisory Committee Comments

XVI. Comments from Audience

XVII. Next meeting date

XVIII. Adjournment

The Executive Committee may take action on any of these items.

Contact: Robert J. "Sam" Tessen, 211 East 7th Street, 7th Floor Conference Room, Austin, Texas 512/479-8891.

Filed: September 18, 1998, 5:32 p.m.

TRD-9814881



Texas Health Insurance Risk Pool

Monday, October 5, 1998, 9:00 a.m.

333 Guadalupe, Room 102

Austin

Board of Directors, Combined Strategic Planning Committee and Staffing Committee Grievance Committee Meeting

AGENDA:

Some members may participate via teleconference if it is difficult or impossible for such members to attend the meeting

I. Executive Session: Committees or the Board of Directors may meet in Executive Sessions in accordance with Texas Open Meetings Act to discuss personnel matters or to seek advice of counsel.

II. Board of Directors: 1. Committee reports; 2. Review of Prior Actions; 3. Treasurer's report; 4. Executive Director's report; 5. Report from TDI on Legislative Matters; 6. Discussion of matters concerning third party administrators; 7. Discussion and review of benefit and eligibility issues; 8. Other administrative matters; 9. Public comment; 10. Setting of next meeting

III. Committee Meetings:

A. Combined Meeting of the Strategic Planning and staffing Committees: 1. Discussion of Executive director Office organizational and staffing issues; 2. Discussion of long-range goals; 3. Discussion of Pool Mission Statement

B. Grievance Committee. 1. Grievance procedures; 2. Review of filed grievances, if any.

Contact: Steve Browning, 301 Congress, Suite 500, Austin, Texas 78701, 512/499-0775.

Filed: September 22, 1998, 3:25 p.m.

TRD-9814985



Texas Healthy Kids Corporation

Tuesday, September 22, 1998, 9:30 a.m.

333 Guadalupe, Hobby Tower 2, Room 400-A

Austin

Board of Directors

EMERGENCY REVISED 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;

Report on possible settlement agreement involving Texas Office of Attorney General and Blue Cross Blue Shield of Texas, Inc. (BCBS), which includes provision requiring BCBS to make substantial contributions to THKC.

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 THKC staff, timelines, future meetings, general updates, other administrative, procedural matters.

Public comment

Reason for emergency: Staff has just received word of the referenced potential settlement, which was reasonably unforeseen at the time of the posting.

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 21, 1998, 3:45 p.m.

TRD-9814939



Texas Department of Housing and Community Affairs

Tuesday, September 29, 1998, 9:45 a.m.

507 Sabine Street, Room 437

Austin

Programs Committee

AGENDA:

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possible act upon the following:

Approve minutes of August 14, 1998 Meeting

Approve Amendments to HOME Program Contracts

Approve HOME Program Awards for 1998 for Owner Occupied, Tenant Based Rental Assistance and Homebuyer Assistance

Approve Extension of Border Housing Initiative for Corona del Valle

Approve Housing Infrastructure Fund Awards

Approve Operator for Northeast Texas Technical Assistance Center

Ratify transfer of \$1,000,000 to Housing Trust Fund and Use of funds

Approve Down Payment and Closing Cost Assistance Guidelines

Approve Acquisition and Conversion of Contracts for Deed with 1994B Funds and HOME Program Funds

Adjourn

Individuals who require auxiliary aids or services from this meeting should contact Gina Arenas, ADA Responsible Employee, at 512/475-3943 or Relay Texas at 1/800/735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Daisy Stiner, 507 Sabine, #900, Austin, Texas 78701, 512/475-3934.

Filed: September 21, 1998, 3:45 p.m.

TRD-9814938



Tuesday, September 29, 1998, 10:45 a.m.

507 Sabine Street, Room 437

Austin

Finance Committee

AGENDA:

The Finance Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possible act upon the following:

Approve minutes of August 14, 1998 Meeting

Approve Resolution to Remove Bond Trustee and Appoint a New Trustee

Approve Program Guidelines for 1980 Single Family Special Mortgage Program

Approve Selection of Bond Counsel and Disclosure Counsel

Approve Designation of Master Servicer and Compliance Agent for 1998 Single Bond Program 54

Approve Buydown of Interest Rate for Single Family Program No. 49

Approve Inducement Resolutions Declaring Intent to Issue Multi-Family Revenue Bonds

Approve Down Payment and Closing Cost Assistance Guidelines

Adjourn

Individuals who require auxiliary aids or services from this meeting should contact Gina Arenas, ADA Responsible Employee, at 512/475-3943 or Relay Texas at 1/800/735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Daisy Stiner, 507 Sabine, #900, Austin, Texas 78701, 512/475-3934.

Filed: September 21, 1998, 3:17 p.m.

TRD-9814936



Tuesday, September 29, 1998, 1:30 p.m.

507 Sabine Street, Room 437

Austin

Board Meeting

AGENDA:

The Board of the Texas Department of Housing and Community Affairs will meet to consider and possible act upon the following:

Approve minutes of August 14, 1998 and August 29, 1998 Meetings

Approve Amendments to HOME Program Contracts

Approve HOME Program Awards for 1998 for Owner Occupied, Tenant Based Rental Assistance and Homebuyer Assistance

Approve Extension of Border Housing Initiative for Corona del Valle

Approve Housing Infrastructure Fund Awards

Approve Operator for Northeast Texas Technical Assistance Center

Ratify transfer of \$1,000,000 to Housing Trust Fund and Use of funds

Approve Down Payment and Closing Cost Assistance Guidelines

Approve Acquisition and Conversion of Contracts for Deed with 1994B Funds and HOME Program Funds

Approve Resolution to Remove Bond Trustee and Appoint a New Trustee

Approve Program Guidelines for 1980 Single Family Special Mortgage Program

Approve Selection of Bond Counsel and Disclosure Counsel

Approve Designation of Master Servicer and Compliance Agent for 1998 Single Bond Program 54

Approve Buydown of Interest Rate for Single Family Program No. 49

Approve Inducement Resolutions Declaring Intent to Issue Multi-Family Revenue Bonds

Executive directors Report on Disaster Relief

Executive Session: Personnel Matters; Litigation and Anticipated Litigation (Potential or Threatened under §551.071 and §551.103, Texas Government Code Litigation Exception,) Personnel Matters Regarding Duties and Responsibilities in Relationship to Budget; Adjourn.

Individuals who require auxiliary aids or services fro this meeting should contact Gina Arenas, ADA Responsible Employee, at 512/475-3943 or Relay Texas at 1/800/735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Daisy Stiner, 507 Sabine, #900, Austin, Texas 78701, 512/475-3934.

Filed: September 21, 1998, 3:46 p.m.

TRD-9814940



Texas Department of Insurance

Thursday, October 8, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-1531.C. To consider whether Rebecca Ann Wood, Austin, Texas, should be issued a Group I Life, Health

Accident and HMO Agent's License by the Texas Department of Insurance (Reset from September 17, 1998).

Contact: Bernice Rose, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: September 22, 1998, 4:47 p.m.

TRD-9814992



Friday, October 9, 1998, 9:00 a.m.

William P. Hobby Building, 333 Guadalupe, Room 1264

Austin

AGENDA:

I. Review, discussion, and possible action regarding minutes from the previous meeting.

II. Discussion and possible action regarding rule amendments, new sections, or repeals, proposed by the Commissioner of Insurance in accordance with Article 5.43-4, Section 5B of the Texas Insurance Code, to 28 TAC Chapter 34, Subchapter H, concerning the Storage and Sale of Fireworks.

III. Discussion and possible action regarding rule amendments, new sections, or repeals, proposed by the public, to 28 TAC chapter 34, Subchapter H, concerning the Storage and Sale of Fireworks.

IV. Discussion and possible action regarding the Fiscal Note and Public Benefit/Cost Note, for any action taken in the previous agenda items.

New matters from the public, not included in preceding agenda items which may be discussed in future meetings dates.

VI. Discussion and possible action on future meeting dates.

Contact: Bernice Rose, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: September 23, 1998, 1:13 p.m.

TRD-9815023



Wednesday, October 14, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-1639.C. To consider whether disciplinary action should be taken against Gloria J. Whitaker, Farmers Branch, Texas, who holds a Local Recording Agent's license issued by the Texas Department of Insurance.

Contact: Bernice Rose, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, 512/463-6328.

Filed: September 22, 1998, 4:57 p.m.

TRD-9814991



Board for Lease of University Lands

Monday, September 28, 1998, 2:00 p.m.

The University of Texas System, Ashbel Smith Hall-9th Floor, 201 West 7th Street

Austin

AGENDA:

1. Approval of the minutes of the July 29, 1998, meeting of the Board for Lease of University Lands.
2. Bid basis for sour crude oil in the Oil Royalty in Kind Program.
3. Lease provisions relating to lease term, applicable royalty rate, and related issues.
4. Lease sale schedule.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or service may contact Loretta Loyd at 512/499-4462 at least two days prior to the meeting date so that appropriate arrangements can be made.

Contact: Pamela S. Bacon, 201 West 7th Street, Austin, Texas 78701, 512/499-4462.

Filed: September 18, 1998, 4:49 p.m.

TRD-9814878



Texas Department of Licensing and Regulation

Friday, September 25, 1998, 1:30 p.m.

E.O. Thompson Building, 920 Colorado, 4th Floor Conference Room
Austin

Air Conditioning and Refrigeration Contractors Advisory Board

EMERGENCY REVISED AGENDA:

This agenda items was inadvertently omitted from the previously filed meeting notice TRD-9813821.

8. New Business

(g) Discussion of rules concerning license numbers on vehicles and in advertising.

Reason for emergency: Board decisions on proposed rules must be made to coincide with the Agency Rule Review Plan as submitted in accordance with Section 167 of the General Appropriations Act. This agenda item was inadvertently omitted but requires discussion at this meeting.

Persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at 512/463-7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, 512/463-7356.

Filed: September 23, 1998, 11:30 a.m.

TRD-9815015



Tuesday, September 29, 1998, 9:00 a.m.

E.O. Thompson Building, 920 Colorado, 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, Joel Yarrington d/b/a Reliable A/C, Hearing and Refrigeration, for performing air conditioning and/

or refrigeration contracting without obtaining the required licensed in violation Texas Civil Statutes, Annotated Article 8861, §3B, pursuant to Texas Revised Civil Statutes Annotated Articles 8861 and 9100, the Texas Government Code Chapter 2001 and 16 Texas Administrative Code Chapter 60.

Contact: Jackie Sager or Rick Wootton, 920 Colorado, Austin, Texas 78711, 512/463-3192.

Filed: September 22, 1998, 8:54 a.m.

TRD-9814959



Tuesday, September 29, 1998, 1:30 p.m.

E.O. Thompson Building, 920 Colorado, 4th Floor, Room 420

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, Joe Rodriquez, for failing to maintain insurance requirements from November 2, 1996 to present, in violation of 16 TAC §75.40(g), and for failing to provide the Department proof of insurance from November 2, 1996 to resent, in violation of 16 TAC §75.40(g), pursuant to Texas Revised Civil Statutes Annotated Articles 8861 and 9100, the Texas Government Code Chapter 2001(APA) and 16 Texas Administrative Code Chapter 60.

Contact: Jackie Sager or Rick Wootton, 920 Colorado, Austin, Texas 78711, 512/463-3192.

Filed: September 22, 1998, 8:54 a.m.

TRD-9814960



Wednesday, September 30, 1998, 9:30 a.m.

E.O. Thompson Building, 920 Colorado, 4th Floor, Room 420

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, Joe Arellano, for advertising on a business card that he engages in the business of performing air conditioning and/or refrigeration contracting without obtaining the required license in violation Texas Administrative Code, §75.22; pursuant to Texas Revised Civil Statutes Annotated Articles 8861 and 9100, the Texas Government Code Chapter 2001.902 and 16 Texas Administrative Code Chapter 60.1-60.95.

Contact: Jackie Sager or Rick Wootton, 920 Colorado, Austin, Texas 78711, 512/463-3192.

Filed: September 22, 1998, 8:54 a.m.

TRD-9814958



Texas Natural Resource Conservation Commission

Thursday, September 24, 1998, 1:30 p.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: September 16, 1998, 12:33 p.m.

TRD-9814703



Friday, October 2, 1998, 10:00 a.m.

Navasota Public Library, 1411 Washington Avenue

Navasota

REVISED AGENDA:

An administrative law judge from the State Office of Administrative Hearings will conduct a public hearing addressing Texaska Frontier Partners, LTD, which has applied to the Texas Natural Resource Conservation Commission for a permit (Proposed Permit No. 03996) to authorize the disposal of cooling tower blowdown, boiler blowdown, reverse osmosis reject water, water treatment filter backwash, and low volume waste sources via irrigation. The applicant proposed to operate the Tenaska Frontier Generating Station, a gas-fired generating plant. The plant site is location on the south side of Highway 30 approximately two miles southwest of the City of Shiro, Grimes County, Texas. The irrigation site is located approximately one mile northwest of the intersection of Highway 30 and Farm-to-Market Road 1486. This location is in the drainage areas of: Lake Creek, in Segment No. 1015 of the San Jacinto River Basin; and Navasota River Below Lake Limestone, in Segment No. 1209 of the Brazos River Basin.

This matter has been designated as SOAH Docket No. 582-98-1494.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3345.

Filed: September 22, 1998, 10:41 a.m.

TRD-9814969



Monday, October 5, 1998, 10:00 a.m.

El Paso Water Utility/Public Service Board 1154 Hawkins Boulevard

El Paso

REVISED AGENDA:

An administrative law judge from the State Office of Administrative Hearings will conduct a public hearing addressing the Executive Director of the TNRCC's recommendation of designation of a Priority Ground Water Management Area (PGMA) in El Paso County, Texas.

This matter has been designated as SOAH Docket No. 582-98-1540.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3345.

Filed: September 16, 1998, 2:32 p.m.

TRD-9814712



Tuesday, October 6, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 Congress Avenue, Suite 1100

Austin

REVISED AGENDA:

For a hearing before an administrative law judge from the State Office of Administrative Hearings will consider the Executive Director's preliminary report and petition assessing administrative penalties against and requiring certain actions of Citgo Refining and Chemicals Company, L.P., East Plant for violations in Nueces County, Texas.

This matter has been designated as SOAH Docket No. 582-98-1661.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3345.

Filed: September 23, 1998, 10:15 a.m.

TRD-9815004



Monday, October 7, 1998, 10:00 a.m.

Diamond Hill Community Center, 1700 Northeast 36th Street

Fort Worth

REVISED AGENDA:

Bob's Cleaning Supply company, 3500 Deen Road, Fort Worth, Texas 76106, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for issuance of proposed Air Permit No. 36968 to authorize construction of a clearing solutions manufacturing facility in Fort Worth, Tarrant County, Texas

This matter has been designated as SOAH Docket No. 582-98-1459.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3345.

Filed: September 17, 1998, 1:28 p.m.

TRD-9814757



Thursday, October 8, 1998, 10:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, Suite 1100

Austin

REVISED AGENDA:

An administrative law judge from the State Office of Administrative Hearings will conduct a public hearing addressing Holmwood Subdivision aka Holmwood Water Supply aka Holmwood Utilities filing a petition with the Texas Natural Resource Conservation Commission (Commission) under Section 13.043 of the Texas Water Code, appealing the rate setting action by the Angela Neches River Authority in Jasper 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 17, 1998, 8:20 a.m.

TRD-9814748



Thursday, October 15, 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 a petition filed by Charlie Morris and James Guthrie on June 5, 1998 signed by 128 ratepayers with the Texas Natural Resource Conservation (Commission) under Section 13.043 of the Texas Water Code, The purpose of this petition is to appeal the rate setting action by Whiterock Water Supply Corporation in Limestone County, Texas.

This matter has been designated as SOAH Docket No. 582-98-1385.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3345.

Filed: September 23, 1998, 11:46 a.m.

TRD-9815019



Texas State Board of Plumbing Examiners

Wednesday, September 30, 1998, 9:00 a.m.

924 East 41st Street

Austin

Enforcement Committee

AGENDA:

Call to order and roll call.

Consideration of minutes of July 8, 1998 Enforcement Committee Meeting for Adoption as Recorded.

Review of Citation List and possible action.

Informal conference: Discussion and possible action on the following case with the individual who has agreed to appear: Case #9900005-Time 10:30 a.m.

Review of Applicants with Past Criminal Convictions and possible action.

Complaint Case for Review

The following case will be reviewed by and possibly act upon by the Committee as time allows. Time may not allow for all cases listed to be reviewed: Case#-98002351, 98002361, 98000821, 98004511, 97-0772, 9800416, 9800125

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, 512/458-2145, Ext. 233.

Filed: September 18, 1998, 1:30 p.m.

TRD-9814818



Texas Rehabilitation Commission

Saturday, September 26, 1998, 8:00 a.m.

4900 North Lamar Boulevard, Brown-Heatley Public Hearing Room, First Floor

Austin

Medical Consultant Advisory Committee

AGENDA:

Registration; welcome; reappointments; roll call; opening remarks; field operations report; external operations report; disability determination report; break; new business provider/consultant issues; other business; and adjournment.

Contact: Denise Estrada, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-4187.

Filed: September 16, 1998, 4:05 p.m.

TRD-9814732



State Office of Risk Management

Tuesday, September 29, 1998, 10:00 a.m.

Capitol Extension, Room E1.026

Austin

Risk Management Board

AGENDA:

1. Call to order;
2. Approval of minutes for August 25 public meeting;
3. Public comment on proposed workers' compensation claims cost allocation rule:

Chapter 251 Workers' Compensation Claims Cost Allocation

Rule 251.500 Definitions

Rule 251.501 Determination of Allocation Participants

Rule 251.502 Allocation Calculation

Rule 251.503 Quarterly Reports

Rule 251.504 Interagency Contracts

Rule 251.505 Reimbursements to the Claims Fund by State Agencies

Rule 251.506 Retention of Savings by State Agencies

4. Discussion, consideration and possible action on proposed Legislative Initiatives;

5. Discussion, consideration and possible action on delegating to the Executive Director the authorization to enter into contracts as required to achieve the objectives of the agency as provided by the General Appropriations Act and state law;

6. Executive Session: Pursuant to §551.074, Government Code, to discuss matters relating to and to receive to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation;

7. Action on matters considered in executive session;

8. Public comment;

9. Confirmation of future public meeting dates;

10. Adjournment

Individuals who may require auxiliary aids or services for this meeting should contact Michelle Merka at 512/936-1503 at least two days prior to the meeting so that appropriate arrangement can be made.

Contact: Patricia Gilbert, P.O. Box 13777, Austin, Texas 78711, 512/936-1503.

Filed: September 21, 1998, 9:12 a.m.

TRD-9814894



Tuesday, September 29, 1998, 10:00 a.m.

Capitol Extension, Room E1.026

Austin

Risk Management Board

AGENDA:

1. Call to order;
2. Approval of minutes for August 25 public meeting;
3. Public hearing to receive comments from interested persons concerning the new rule proposed under 28 TAC Chapter 251, which provides State Office of Risk Management with the authority to promulgate and adopt rules consistent with the Act governing its administration, including a rule relating to Workers Compensation Claims Cost Allocation. The proposed rule, §§251.500–251.506, was public in the September 18, 1998 issue of the Texas Register. Any interest person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to State Office of Risk Management or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, State Office of Risk Management reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or grouped are encouraged to present their commonly held views or similar comments through a representation member where possible.
4. Discussion, consideration and possible action on proposed Legislative Initiatives;
5. Discussion, consideration and possible action on delegating to the Executive Director the authorization to enter into contracts as required to achieve the objectives of the agency as provided by the General Appropriations Act and state law;
6. Executive Session: Pursuant to §551.074, Government Code, to discuss matters relating to and to receive to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation;
7. Action on matters considered in executive session;
8. Public comment;
9. Confirmation of future public meeting dates;
10. Adjournment

Individuals who may require auxiliary aids or services for this meeting should contact Michelle Merka at 512/936–1503 at least two days prior to the meeting so that appropriate arrangement can be made.

Contact: Patricia Gilbert, P.O. Box 13777, Austin, Texas 78711, 512/936–1503.

Filed: September 21, 1998, 9:34 a.m.

TRD-9814962



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

Board

REVISED 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. Discussion of approval of Courses 2 and 8
6. Adjourn to executive session in accordance with §551.074 Personnel Matters, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit the Executive Director.
7. Reconvene from Executive Session.
8. Discussion action or vote on Personnel Matters: the appointment, employment, evaluation, reassignment, duties discipline, or dismissal of a public officer or employee to wit the Executive Director.
9. Discussion on accepting a new text for Assessing and Collecting (non-Appraisal Courses).
10. Discussion on Policy and Procedures changes in the Property Tax Education Standards
11. Discussion on Policy and Procedures paragraph 1a. Persons Required to Register and definition of Actively Engaged
12. Adjourn

Contact: David E. Montoya, 333 Guadalupe Street, Tower 2, Suite 520, Austin, Texas 78701–3942, 512/305–7300.

Filed: September 25, 1998, 3:16 p.m.

TRD-9815112



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. Discussion and appropriate action on vote on approval of Courses 2 and 8.
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. Adjourn to executive session in accordance with §551.074 Personnel Matters, to deliberate the appointment, employment, evalua-

tion, reassignment, duties, discipline, or dismissal of a public officer or employee to wit the Executive Director.

11. Reconvene from Executive Session.

12. Discussion and appropriate action or vote on Personnel Matters: the appointment, employment, evaluation, reassignment, duties discipline, or dismissal of a public officer or employee to wit the Executive Director.

13. Discussion and appropriate action or vote on list of registrants that have met all requirements for Reclassification/Recertification since last regular quarterly meeting.

14. 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

15. Determine date for next quarterly meeting.

16. Adjourn.

Contact: David E. Montoya, 333 Guadalupe Street, Tower 2, Suite 520, Austin, Texas 78701-3942, 512/305-7300.

Filed: September 25, 1998, 3:16 p.m.

TRD-9815111



Texas A&M University System, Board of Regents

Tuesday, September 22, 1998, 1:00 p.m.

2121 West Holcombe Boulevard, Conference Room 119, Institute of Biosciences and Technology

Houston

Committee on Buildings and Physical Plant

AGENDA:

Consider and vote on: Purchase of Land and improvements, Erath Co. TAMUS; Naming of Facilities; Approval of PORs, Appropriations for Designs and Selections of A/E Design Teams; Action on Bids; Authorization to Use Competitive Sealed Proposal Process for the New Science Building at TSU, New Science Building at PVAMU and Student Development Center at TAMIU; Authorization for the Chancellor to Take Action on Bids; Report on the Status of System Construction Projects Authorized by the Board of Regents; Report on the Status of Projects under Construction

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: September 17, 1998, 4:04 p.m.

TRD-9814775



Thursday, September 24, 1998, 1:30 p.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Board of Regents

AGENDA:

Land Acquisition; Name Facilities; Construction Projects; A/Es; Designs; PORs; Bids; Use of Competitive Sealed Proposal Process; Local Depository; Appropriate Funds; Distribute Income; Gifts, Grants, Loan and Bequests; Degree Programs; Academic Reorganization; Institute, Program and Centers; University System Center Local in

Killeen; Admission Requirements; Resolutions; Tenure; Special Titles; Appts, Promotions and Dismissals; Appoint Vice President, Dean, President/TIO; Approve Minutes; Reports; Closed Session Disc: Consult System Attys/Litigation and Matters Rec as Atty-Client Confidential and Privileged; Land Matters; Matters Involving Appt, Employ, Eval, Reassign, Duties, Discipline or Dismissal or Hear Complaints or Changes Against Officer or Employee including appt of Vice Presidents, Dean and Pres/TIO; Progress Report and Search for the chancellor. Closed Session Conferences w/ System Employees to Receive Information Including Staff Report on the Affiliation with the South Texas College of Law.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: September 18, 1998, 1:27 p.m.

TRD-9814816



Thursday, September 24, 1998, 1:45 p.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Committee on Academic and Student Affairs

AGENDA:

Consider and vote on: MS Degree/Juvenile Justice, PVAMU; Phase 2/Academic Reorganization Plan, PVAMU; Change Name/Microcirculation Res Inst, TAMU; Concept Paper/Aerospace Vehicle System Inst, TEES; Concept Paper/Analog and Mixed-Signal Center, TEES; Close Program/Automation in Manufacturing, TEES; Establish Commercial Space center for Eng. TEES; Designate Center/Ports and Waterways as National Maritime Enhancement Inst, TTI; Approve Admission Requirements for 1999-2000 Academic Year, TAMUS; Resolution Recognizing Rep, Irma Rangel; University System Center in Killeen, Texas, Ratify Memo of Understanding and Seek Leg Appropriations. Also receive reports on: Fall Enrollments; Admission Requirements; Proposed Initiative for Excellence in Education and Proposed Texas Aviation Institute

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: September 18, 1998, 1:28 p.m.

TRD-9814817



Friday, September 25, 1998, 10:00 a.m.

Room 292, MSC, Joe Routh Boulevard, Texas A&M University

College Station

Committee on Finance

AGENDA:

Consider and vote on: Approval of Norwest Bank as Local Depository, Texas A&M University; Appropriation of Funds for Deferred Maintenance Projects, Texas &M University; Approval of Distribution of Income from the Estate of Ardella R. Helm to Texas A&M University; Abilene Christian University and Texas Woman's University; Acceptance of Gifts, Grants, Loans and Bequests, The Texas A&M University System; Acceptance of Report of Appropriations by the Chancellor, The Texas A&M University System. Also receive Status Report on the Permanent University Fund

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: September 18, 1998, 1:27 p.m.

TRD-9814815



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

REVISED 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 Nine-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. Withdrawal from the John and Rebecca Moores System Endowment; 26. Award of Construction Contract for the LeRoy and Lucile Melcher Center for Public Broadcasting; 27. 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 16, 1998, 2:36 p.m.

TRD-9814715



University of Texas Health Center at Tyler

Thursday, October 1, 1998, Noon

Highway 271 and Highway 1555, Room #116, Biomedical Research Building

Tyler

Animal Research Committee

AGENDA:

Approval of Minutes

Chairman Report

Veterinarian Report

Old Business

New Business

Adjournment

Contact: Lea Alegre, P.O. Box 2003, Tyler, Texas 75710, 903/877-7661.

Filed: September 21, 1998, 1:39 p.m.

TRD-9814923



University of Texas System

Wednesday, September 23, 1998, 1:00 p.m.

Ex-Students' Association Building (Legends Room), 21st and San Jacinto

Austin

UT/Austin-Intercollegiate Athletics/Men

AGENDA:

Convene into Open Session; Recess into Executive Session; Reconvene into Open Session; Approve Minutes of August 13, 1998; Items from Executive Session; Academics; Schedules/Schedule Changes; Tickets/Ticket Policy; Major gifts and Planned Giving; Development; Old Business; New Business; and Adjourn.

Contact: Betty Corley, P.O. Box 7339, Austin, Texas 78713, 512/471-5757.

Filed: September 17, 1998, 1:58 p.m.

TRD-9814758



Texas Board of Veterinary Medical Examiners

Thursday, October 1-2, 1998, 8:30 a.m.

William P. Hobby Building, 333 Guadalupe, Tower 2, Room 225

Austin

Board

AGENDA:

The Board will consider and take action on Agreed Orders, a Proposal for Decision, a petition to waive national examinations, future scope of the licensing examination, and the Executive director's Report as reflected on the attached agenda. The Board will discuss and possibly adopt proposed amendment to rules 573.64 and 577.15. Amendments to rule 573.1 "Avoidance of Conflicting Interest" will

also be considered. The Board will discuss and take possible action on the other items listed on the attached agenda.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701, 512/305-7555.

Filed: September 21, 1998, 3:55 p.m.

TRD-9814941

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Texas Workforce Commission

Tuesday, September 29, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Approval of prior meeting notes: Public comment; Discussion, consideration and possible action: (1) on acceptance of pledges of Child Care Matching Funds; (2) on the proposal of the Monitoring Rules (40 TAC, Chapter 800); (3) concerning the proposed Child Care Rules (40 TAC Chapter 809) including repeal, amendments and new rules; (4) concerning the proposal of the Child Care Allocation Rule (40 TAC, Chapter 800) including repeals, amendments, and new rules; (5) on any modifications to the Texas Workforce Commission Appropriation Request (LAR) for the Fiscal Year 2000 and 2001; (6) on the PY97 JTPA Fourth Quarter Interim Performance Report; (7) on the approval of the full allocation of the PY98 Welfare-to Work Formula Grant to the local workforce develop areas, along with the authorization for the staff to sign and release pre-agreement letters and to negotiate contracts with the local workforce development boards and the private industry councils, for the full PY98 allocation of Welfare-to-Work funds; (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; (12) 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 Unem-

ployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 39.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-8812.

Filed: September 21, 1998, 2:37 p.m.

TRD-9814928

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Regional Meetings

Meeting filed September 16, 1998

Austin-Travis County MHMR Center, Planning and Operations Committee Meeting met in an emergency revised agenda at 1430 Collier Street, Board Room, Austin, September 18, 1998, at 12:30 p.m. Reason for emergency meeting: Only time a quorum could meet, prior to Board meeting-Action Item. Information may be obtained from ArVelle Dwyer, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9814716.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors met at 226 State Highway 132, Natalia, September 25, 1998, at 7:00 p.m. Information may be obtained from John W. Ward, III, 226 State Highway 132, Natalia, Texas 78059, 830/665-2132. TRD-9814707.

Central Counties Center for MHMR Services, Board of Trustees met at Lisa's Schnitzel House, 311 East 3rd Street, Lampasas, September 24, 1998, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, 254/298-7010. TRD-9814730.

Central Texas Water Supply Corporation, Monthly Meeting met at #1 West Highway 190, Kempner, September 22, 1998, at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9814720.

Coastal Bend Council of Governments, Membership met at 2910 Leopard Street, Corpus Christi, September 25, 1998, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78459, 512/883-5743. TRD-9814711.

Central Texas Water Supply Corporation, Negotiating Committee met at KWSC Conference Room, #1 Highway 190, Kempner, September 22, 1998, at 5:30 p.m. Information may be obtained from Delores Hamilton, 4020 Lake cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9814719.

Kempner Water Supply Corporation, Negotiating Committee Meeting met at Highway 190, Kempner Water Supply Corporation, Kempner, September 22, 1998, at 5:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, 512/932-3701. TRD-9814710.

Lower Rio Grande Valley Development Council, Board of Directors Meeting met at the Harlingen, Chamber of Commerce, 311 East Tyler, Harlingen, September 24, 1998, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr. or Anna M. Hernandez, 311 North 15th Street, McAllen, Texas 78501-4705, 956/682-3481. TRD-9814721.

North Central Texas Council of Governments, Executive Board met at Centerpoint Two, 616 Six Flags Drive, 2nd Floor, Arlington, September 24, 1998, at 9:00 a.m. Information may be obtained from Kristy Libotte Keener, P.O. Box 5888, Arlington, Texas 76005-5888, 817/640-3300. TRD-9814743.

Panhandle Regional Planning Commission, Board of Directors met at 4800 Bushland Boulevard, Amarillo, September 24, 1998, at 3:00 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, 806/372-3381. TRD-9814734.

Pecan Valley MHMR Region, Board of Trustees met at 107 Pirate Drive, Granbury, September 23, 1998, at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, 254/965-7806. TRD-9814722.

Meetings filed September 17, 1998

Central Plains Center for MHMR and SA, Board of Trustees met at 208 South Columbia, Plainview, September 24, 1998, at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, 806/293-2636. TRD-9814747.

Deep East Texas Council of Governments, Grants Application Review Committee met at the Woodville Inn, 201 North Magnolia, Woodville, September 24, 1998, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704 or fax 409/384-5390. TRD-9814751.

Deep East Texas County Commissioners and County Judges Association Meeting met at Rayburn Country Club, Rayburn Hall, Jasper, October 1, 1998, at 10:00 a.m. Information may be obtained from Hornable Mark Evans, P.O. Box 457, Groveton, Texas 75845, 409/384-5704. TRD-9814773.

Edwards Aquifer Authority, Ad Hoc Committee on Recharge met at 1615 North St. Mary's Street, San Antonio, September 22, 1998, at 9:30 a.m. Information may be obtained from Mary Ester R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9814771.

Edwards Aquifer Authority, Finance Committee met at 1615 North St. Mary's Street, San Antonio, September 23, 1998, at 12:00 p.m. Information may be obtained from Mary Ester R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9814768.

Edwards Aquifer Authority, Aquifer Management Planning Committee met at 1615 North St. Mary's Street, San Antonio, September 23, 1998, at 1:30 p.m. Information may be obtained from Mary Ester R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9814770.

Edwards Aquifer Authority, Permits Committee met at 1615 North St. Mary's Street, San Antonio, September 23, 1998, at 3:30 p.m. Information may be obtained from Mary Ester R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9814767.

Edwards Aquifer Authority, Legal Committee met at 1615 North St. Mary's Street, San Antonio, September 25, 1998, at 10:00 a.m. Information may be obtained from Mary Ester R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9814769.

Hale County Appraisal District, Appraisal Review Board met at Hale County Appraisal District, 303 West 8th, Plainview, September 21, 1998, at 9:00 a.m. Information may be obtained from Linda Jaynes, 302 West 8th, Plainview, Texas 79072, 806/293-4226. TRD-9814772.

Johnson County, Central Appraisal District met in an emergency revised agenda at 109 North Main, Suite 201, Room 202, Cleburne, September 17, 1998, at 4:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, 817/558-8100. TRD-9814756.

Liberty County Central Appraisal District, Board of Directors met at 315 Main Street, Liberty, September 23, 1998, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, 409/336-5722. TRD-9814750.

Riceland Regional Mental Health Authority, Program of Services Committee met at 4910 Airport, Rosenberg, September 24, 1998, at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532-3098. TRD-9814778.

Riceland Regional Mental Health Authority, Finance/HR Committee met at 4910 Airport, Rosenberg, September 24, 1998, at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532-3098. TRD-9814779.

Sabine Valley Center, Board of Trustees met at 107 Woodbine, Longview, September 24, 1998, at 7:00 p.m. Information may be obtained from Inman White, P.O. Box 6800, Longview, Texas 75608. TRD-9814752.

San Jacinto River Authority, Board of Directors met at 2301 North Millbend Drive, The Woodlands, September 24, 1998, at 7:30 a.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, 409/588-1111. TRD-9814749.

Texas Municipal Power Agency, Board of Directors Special Meeting met at Gibbons Creek Stream Electric Station, Administration Building, 2-1/2 Miles North of Carlos, Carlos, September 23, 1998, at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, 409/873-1131. TRD-9814774.

Texas Rural Communities, Inc., Executive Committee Meeting met at 124501 Hymeadow Drive, Building 1, Suite 1B, Austin, September 18, 1998, at 2:30 p.m. Information may be obtained from Leland Beatty, 12401 Hymeadow Drive, Building 1, Suite 1B, Austin, Texas 78750, 512/219-0468. TRD-9814754.

West Central Texas Council of Governments, Executive Committee met at 1024 EN 10th Street, Abilene, September 23, 1998, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9814777.

Meeting field September 18, 1998

Alamo Area Council of Governments, Management Committee met at 118 Broadway, Suite 400, San Antonio, September 23, 1998, at 10:00 a.m. Information may be obtained from Al J. Nortzon III, 118 Broad, Suite 400, San Antonio, Texas 78205, 210/362-5200. TRD-9814792.

Andrews Center, Board of Trustees met at 2323 West Front Street, Board Room, Tyler, September 24, 1998, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, 903/535-7338. TRD-9814796.

Atascosa County Appraisal District, Board of Directors met at 4th and Avenue J, Poteet, September 24, 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-9814814.

Austin-Travis County MHMR Center, Finance and Control Committee met at 1430 Collier Street, Board Room, Austin, September 22, 1998, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9814793.

Brazos River Authority, Water Quality Committee Board of Directors met at 801 University Drive East, College Station, September 28, 1998, at 9:00 a.m. Information may be obtained from Mike Bukala,

P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9814789.

Brazos River Authority, Lake Management Committee, Board of Directors met at 801 University Drive East, College Station, September 28, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9814788.

Brazos River Authority, Board of Directors met at 801 University Drive East, College Station, September 28, 1998, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9814790.

Burke Center, Board of Trustees met at 4101 South Medford Drive, Lufkin, September 29, 1998, at 1:00 p.m. Information may be obtained from Chauntel Moor, 4101 South Medford Drive, Lufkin, Texas 75901, 409/639-1141. TRD-9814798.

Central Texas Opportunities, Inc., Board of Directors met at 1200 South Frio, P.O. Box 802, Coleman, September 22, 1998, at 7:00 p.m. Information may be obtained from Barbara E. Metcalf, P.O. Box 820, Coleman, Texas 76834, 915/625-4167. TRD-9814828.

Central Texas Rural Transit District, Board of Directors met at 1200 South Frio, Coleman, September 22, 1998, at 8:00 p.m. Information may be obtained from Sabrina Tibbetts, 1200 South Frio, Coleman, Texas 76834, 915/625-4167. TRD-9814829.

Coastal Bend Chief Elected Officials Council, CEO Council Quarterly Meeting met at the Council of Governments Office, 2910 Leopard Street, Corpus Christi, September 25, 1998, at 3:00 p.m. Information may be obtained from Shelley Franco, 1616 MLK Drive, 3rd Floor, Corpus Christi, Texas 78401, 512/889-5330, Ext. 107. TRD-9814813.

Dallas Area Rapid Transit, Audit Committee met in Conference Room B, First Floor, 1401 Pacific Avenue, Dallas, September 22, 1998, at 10:30 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9814844.

Dallas Area Rapid Transit, Project Management Committee met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, September 22, 1998, at Noon. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9814845.

Dallas Area Rapid Transit, Planning Committee Meeting met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, September 22, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9814846.

Dallas Area Rapid Transit, Minority Affairs Committee met in Conference Room B, First Floor, 1401 Pacific Avenue, Dallas, September 22, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9814847.

Dallas Area Rapid Transit, Committee of the Whole met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, September 22, 1998, at 4:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9814849.

Dallas Area Rapid Transit, Board of Directors Meeting met in the Board Room, First Floor, 1401 Pacific Avenue, Dallas, September 22, 1998, at 6:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9814848.

Henderson County Appraisal District, Board of Directors met at 1751 Enterprise Street, Athens, September 23, 1998, at 5:30 p.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens Texas 75751, 903/675-9296. TRD-9814830.

Lampasas County Appraisal District, Board of Directors met at 109 East 5th Street, Lampasas, September 24, 1998, at 7:00 p.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550-0175, 512/558-8058. TRD-9814831.

Lower Colorado River Authority, Land and Water Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, September 22, 1998, at 2:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, 512/473-3371. TRD-9814843.

Lower Colorado River Authority, Planning and Public Policy Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814862.

Lower Colorado River Authority, Energy Operations Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814863.

Lower Colorado River Authority, Land and Water Operations Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814864.

Lower Colorado River Authority, Finance and Administration Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814865.

Lower Colorado River Authority, Audit Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814866.

Lower Colorado River Authority, Emerging Issues Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814867.

Lower Colorado River Authority, Regional Development Committee met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814868.

Lower Colorado River Authority, Board of Directors met at 1884 State Highway 71 West approximately 12.9 miles east of the Junction of Highway 71 and Highway 973 (Austin/Bergstrom) and 8 miles west of Bastrop, LCRA's McKinney Roughs, Environmental Learning Center Building, Classroom, Cedar Creek, September 23, 1998, at 9:00 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-9814869.

Lower Colorado River Authority, Energy Operations Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814872.

Lower Colorado River Authority, Planning and Public Policy Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814871.

Lower Colorado River Authority, Land and Water Operations Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814873.

Lower Colorado River Authority, Finance and Administration Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814874.

Lower Colorado River Authority, Audit Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814875.

Lower Colorado River Authority, Regional Development Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814876.

Lower Colorado River Authority, Emerging Issues Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814877.

Lower Colorado River Authority, Board of Directors met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, September 24, 1998, at 9:00 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-9814870.

MHMR Authority of Brazos Valley, Board of Trustees met at 1504 Texas Avenue, Bryan, September 24, 1998, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77802, 409/822-6467. TRD-9814795.

Northeast Texas Municipal Water District, Board of Director met at Highway 250 South, Hughes Springs, September 28, 1998, at 10:00 a.m. Information may be obtained from Walt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, 903/639-7538. TRD-9814861.

West Central Texas Council of Governments, Executive Committee met at 1025 EastNorth 10th Street, Abilene, September 23, 1998, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 EastNorth 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9814783.

Wood County Appraisal District, Appraisal Review Board met at 210 Clark Street, P.O. Box 518, Quitman, September 23, 1998, at 8:45 a.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, 903/763-4891. TRD-9814797.

Meetings filed September 21, 1998

Austin-Travis County MHMR Center, Board of Trustees met at 1430 Collier Street, Board Room, Austin, September 24, 1998, at 5:00 p.m. Information may be obtained from Arvelle Dwyer, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9814927.

Brazos G Regional Water Planning Group met at 4400 Cobbs Drive, Waco, October 5, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9814945.

Canyon Regional Water Authority, Committee Meeting met at the Green Valley Special Utility District, 529 South Center Street, Marion, September 29, 1998, at 9:00 a.m. Information may be obtained from Paul M. Taggart, 850 Lakeside Pass, New Braunfels, Texas 78130, 930/609-0543. TRD-9814924.

Coryell City WSD, Board of Directors met at 9440 FM 929, Gatesville, September 24, 1998, at 7:30 p.m. Information may be obtained from Helen Swift, 9440 FM 929, Gatesville, Texas 76528, 254/865-6089. TRD-9814907.

Dallas Central Appraisal District, Appraisal Review Board Meeting met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, September 30, 1998, at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, 214/631-0520. TRD-9814887.

East Texas Council of Governments, Youth Committee of the Workforce Development Board met at 3800 Stone Road, Kilgore, September 29, 1998, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9814942.

Golden Crescent Regional Planning Commission, Board of Directors met at GCRPC Board Room, 568 Big Bend Drive, Victoria, September 30, 1998, at 5:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, 512/578-1587. TRD-9814937.

Johnson County Central Appraisal District, Appraisal Review Board will meet at 109 North Main ARB Conference Room, Cleburne, October 6-8, 1998, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, 817/645-3986. TRD-9814944.

Lee County Appraisal District, Board of Directors met at 218 East Richmond Street, Giddings, September 30, 1998, at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, 409/542-9618. TRD-9814906.

Northeast Texas Rural Rail Transportation District, Board met at Greenville Municipal Building, 2821 Washington Street, Greenville, September 24, 1998, at Noon. Information may be obtained from Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, 903/450-0140. TRD-9814905.

Sabine Valley Center, Board of Trustees met at 107 Woodbine, Longview, September 24, 1998, at 7:00 p.m. Information may be obtained from Inman White, P.O. Box 6800, Longview, Texas 75608, 903/237-2393. TRD-9814899.

Meetings filed September 22, 1998

Burke Center, Board of Trustees met in a revised agenda at 4101 South Medford Drive, Lufkin, September 29, 1998, at 1:00 p.m. Information may be obtained from Chauntel Moore, 4101 South Medford Drive, Lufkin, Texas 75901, 409/639-1141. TRD-9814998.

Central Plains Center for MHMR & SA, Board of Trustees met in an emergency revised agenda at 208 South Columbia, Plainview, September 24, 1998, at 6:00 p.m. Reason for emergency: Action required before October 1, 1998. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, 806/293-2636. TRD-9814975.

Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, September 30, 1998, at 9:00 a.m. Information may be obtained from Brenda Downey, or Glenda Strackbein, 920 St. Paul, Gonzales, Texas 78659, 830/672-2879 or fax 830/672-8345. TRD-9814990.

Grand Parkway Association, Board of Directors met at 4544 Post Oak Place, Suite 222, Houston, October 1, 1998, at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, 713/965-0871. TRD-9814974.

Lamb County Appraisal District, Board of Directors will meet at 331 LFD Drive, Littlefield, October 8, 1998, at 6:00 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, 806/385-6474. TRD-9814963.

Lamb County Appraisal District, Appraisal Review Board will meet at 331 LFD Drive, Littlefield, October 27, 1998, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, 806/385-6474. TRD-9814968.

Lower Neches Valley Authority, Executive Committee met at 7850 Eastex Freeway, Beaumont, September 28, 1998, at 9:00 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726, 409/892-4011. TRD-9814977.

Northeast Texas Rural Rail Transportation District, Board met at the Greenville Municipal Building, 2821 Washington Street, Greenville,

September 25, 1998, at 1:30 p.m. Information may be obtained from Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, 903/450-0140. TRD-9814970.

Region F Regional Water Planning Group, Regional F RWPG Meeting met at the Texas A&M University System, Research and Extension Center, 7887 US Highway 87 North, San Antonio, September 28, 1998, at 10:30 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721-0869, 915/267-6341. TRD-9814981.

San Antonio-Bexar County Metropolitan Planning Organization, Transportation Steering Committee met at the Executive Assembly Center of the Convention Center Complex, Corner of South Alamo & East Market, San Antonio, September 29, 1998, at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, San Antonio, Texas 78204, 210/227-8651. TRD-9814947.

Southwest Milam Water Supply Corporation, Board met at 114 East Cameron, Rockdale, September 28, 1998, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, 512/446-2604. TRD-9814973.

West Central Texas Municipal Water District met at 410 Hickory, Abilene, September 25, 1998, at 9:30 a.m. Information may be obtained from David E. Bell, P.O. Box 2362, Abilene, Texas 79604, 915/673-8254. TRD-9814961.

Meetings filed September 23, 1998

Central Counties Center for MHMR Service, Board of Trustees met at Lisa's Schnitzel House, 311 East 3rd Street, Lampasas, September 24, 1998, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, 254/298-7010. TRD-9814995.

Central Texas MHMR Center, Board of Trustees Board Retreat met at 118 West Pecan Coleman State Bank, Coleman, September 26, 1998, at 9:15 a.m. Information may be obtained from David Williams, P.O. Box 250, Brownwood, Texas 76801, 915/646-9574. TRD-9815006.

Guadalupe-Blanco River Authority, Retirement and Benefit Center met in a revised agenda at GBRA Office, 933 East Court Street, Seguin, September 29, 1998, at 2:00 p.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9815017.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board will meet at the Red Lion Hotel, Lobby Level, 2525 West Loop South, Main Ballroom, Houston, October 6, 198, at 10:30 a.m. Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9815007



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 Commission on Alcohol and Drug Abuse

Correction of Error

The Texas Commission on Alcohol and Drug Abuse adopted new 40 TAC §§143.1, 143.2, 143.11–143.18, 143.21–143.24. The rules appeared in the August 21, 1998, issue of the *Texas Register*, (23 TexReg 8688).

On page 8689, §143.11(e) was omitted. It reads as follows:

“(e) The commission develops goals and identifies services to be purchased based on its statewide service delivery plan and RAC recommendations for regional services.”



Office of the Attorney General

Agreed Final Judgement and Permanent Injunction

Notice of hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act contained at Chapter 361 of the Texas Health & Safety Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, 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 Act.

Case Title and Court: Harris County, Texas and the State of Texas acting by and through the Texas Natural Resource Conservation Commission v. Otis Williams, Individually and d/b/a Parkway Topsoil, Cause No. 98-10432 in the 190th Judicial District, Harris County, Texas.

Nature of Defendant's Operations: Defendant Otis Williams operates a topsoil business at his property in the 10500 bock of Carter Road Harris County, Texas. Otis Williams has disposed municipal solid waste at this site without authorization from the Texas Natural Resource Conservation Commission. This property is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction contains provisions for injunctive relief and civil penalties. The injunction, among other things, requires removal of municipal solid waste subject to the following provisions:

1. By the date the final judgment is signed, the judgment requires all plywood removed from the south side of the Defendant's property at 10500 Carter Road.
2. By December 31, 1998, the judgment requires removal of all material and rubbish that is not clean wood from his property at 10500 Carter Road.
3. By September 30, 1999, the judgment requires all clean wood material remaining on the property at 10500 Carter Road be ground or chipped so that it has been made into mulch or has begun composting.
4. The Order also prohibits the Defendant from importing any more clean wood material to his site at 10500 Carter Road unless and until all the clean wood material currently on the property at 10500 Carter Road is ground or chipped so that it has been made into mulch or has begun composting.
5. At the time Defendant is permitted to import additional clean wood material to 10500 Carter Road by the judgment, he may not import clean wood material to his site unless he or his employees have equipment on site that is capable of grinding or chipping the material within twenty-four hours of its receipt at the facility unless he has registered his facility with the TNRCC.

The judgment also contains a requirement that the Defendant pay \$14,000.00 in civil penalties, attorney fees in the amount of \$2,000.00, and all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed by Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711- 2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9815008
Sarah Shirley
Assistant Attorney General



Water Code Enforcement Settlement Notice

Notice is hereby given by the Office of the Attorney General of the following proposed agreed final judgment that would finally settle a civil enforcement action initiated under Subchapter C of Chapter 341 of the Water Code and Chapter 7 of the Water Code. Section 7.110 of Chapter 7 of the Water Code provides that before the Commission approves an agreed final judgment that would finally settle a civil enforcement action initiated under the chapter to which the State of Texas is a party or before the court signs a judgment or other agreement settling a judicial enforcement action, other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act, the Attorney General 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 final judgment if the comments disclose facts or considerations that indicate the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Chapter 7 of the Water Code.

Case Title and Court: State of Texas v. City of Edcouch, Cause No. 97-10713, in the 261st District Court, Travis County, Texas.

Nature of Defendant's Operations: The City of Edcouch operates a public water system and wastewater treatment facilities in Hidalgo County, Texas. The public water system is located at 310 Adkins St., Edcouch, Texas. The wastewater treatment facilities are approximately 2000 feet east of State Highway 1015 between Mile 17 Road and the Southern Pacific Railroad in Hidalgo County, Texas.

Proposed Agreed Judgment: The proposed Agreed Final Judgment requires the city to make improvements to the public water system as required by a 1996 order issued by the Commission, and construct the proposed water treatment plant expansion. The proposed Agreed Final Judgment also provides for the payment to the State of Texas in the amount of \$15,000 in civil penalties, \$10,000 in attorney's fees, and a five year injunction relating to safe drinking water standards and Chapter 26 of the Water Code.

For a complete description of the proposed settlement agreement, the entire proposed Agreed Final Judgment should be reviewed. Requests for copies of the proposed Agreed Final Judgment and written comments on the proposed Agreed Final Judgment should be directed to Ronnie Jones, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9814904
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: September 21, 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 3, 1998, through September 22, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Texas Eastern Transmission Corporation; Location: The project is located in Pita Island and South Bird Island, Texas in Nueces and Kleberg Counties; Project No. 98-0434-F1; Description of Proposed Action: The applicant proposes to abandon its natural gas pipeline, Line No. 16-1 in Nueces and Kleberg Counties, Texas. Prior to abandoning Line 16-1, Texas Eastern will pig and clean the line, remove all aboveground piping and associated meter stations, cap each end of the line, and fill the pipeline with either fresh water or 50 psi of nitrogen; Type of Application: U.S.C.O.E. permit application under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: City of Kingsville; Location: The discharge from this municipal wastewater treatment plant is made into Tranquitas Creek thence to San Fernando Creek; thence to Cayo del Grullo; thence to Baffin Bay/Alanza Bay/Cayo del Grullo/Laguna Salada in Segment No. 2492 of the Bays and Estuaries, a water of the United States. The discharge is located on that water at Latitude: 27 degrees 30' 54" N., Longitude: 97 degrees 50' 02" W.; Project No. 98-0435-F1; Description of Proposed Action: The applicant requests issuance of a National pollutant Discharge Elimination System permit to expire June 30, 2000; Type of Application: U.S. Environmental Protection Agency NPDES #TX0023418 under the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: City of Houston; Location: The discharge from this municipal wastewater treatment plant is made into HCFC Ditch D124-00-00; thence to Brays Bayou; thence to the Houston Ship Channel in Segment No. 1007 of the San Jacinto River Basin, a water of the United States classified for industrial water supply and navigation. The discharge is located on that water at Latitude: 29 degrees 42' 22" N., Longitude: 95 degrees 33' 31" W.; Project No. 98-0436-F1; Description of Proposed Action: The applicant requests issuance of a National pollutant Discharge Elimination System permit to expire August 31, 2002; Type of Application: U.S. Environmental Protection Agency NPDES #TX0065307 under the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: City of Galveston; Location: The project is located in the Lake Madeline Channel adjacent to the Jones Drive Bridge, in Galveston, Galveston County, Texas; Project No. 98-0437-F1; Description of Proposed Action: The applicant is requesting authorization to mechanically dredge to an elevation of -8 feet mean sea level, the Lake Madeline Channel near the Jones Drive Bridge. Approximately 550 cubic yards of material will be removed by dragline and deposited on an upland disposal site at Galveston Municipal Airport. The purpose of the project is to deepen the existing boat channel that has silted in; Type of Application: U.S.C.O.E. permit application #21418 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Dr. David Randall; Location: The project is located on Offats Bayou at 7004 Avenue O, Galveston County, Galveston, Texas; Project No. 98-0438-F1; Description of Proposed Action: The applicant proposes to construct a concrete sheetpile bulkhead to replace an existing structure. The new bulkhead will be 156.5 feet

long and 3 feet high and will be built across the waterfront from property corner to property corner; Type of Application: U.S.C.O.E. permit application #21404 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Bolivar Terminal Company; Location: The project is located on the south bank of the Gulf Intracoastal Waterway about 5 1/2 miles east of Port Bolivar, on Bolivar Peninsula, Galveston County, Texas. The USGS quad reference map is Flake, TX; Project No. 98-0439-F1; Description of Proposed Action: The applicant is requesting a ten-year extension of time to perform maintenance dredging and an amendment to complete new work. The maintenance dredging is authorized until 31 December 2000, an extension until December 31, 2008 is sought; Type of Application: U.S.C.O.E. permit application #13639(03) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Exxon Pipeline Company; Location: The project will begin at Alaminos Canyon in Area Block 25 of the Gulf of Mexico and extend to an existing petroleum facility located on Quintana Beach, approximately 2 miles south of Freeport, Brazoria County, Texas; Project No. 98-0440-F1; Description of Proposed Action: The applicant proposes to install 35.07 miles of 18-inch pipeline and 117.22 miles of 20-inch pipeline, (total 152.3 miles) to serve the Diana/Hoover Deep Draft Caisson Vessel in the Gulf of Mexico; Type of Application: U.S.C.O.E. permit application #21370 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Coastal Crane, Inc.; Location: The project is located in Aransas Bay adjacent to 1802 and 1804 Bayshore Drive, Rockport, Aransas County, Texas; Project No. 98-0441-F1; Description of Proposed Action: The applicant proposes to construct 148-foot concrete bulkhead which will connect to existing bulkheads on both sides of the property. Approximately 300 cubic yards of fill will be placed below the mean high tide line; Type of Application: U.S.C.O.E. permit application #21416 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: City of Corpus Christi; Location: The project is located adjacent to OSO Creek in the Schanen Drainage Ditch approximately 1/4 mile downstream from Cedar Pass Drive along Sun Valley Drive in Corpus Christi, Nueces County, Texas; Project No. 98-0442-F1; Description of Proposed Action: The applicant proposes to stabilize and control erosion along approximately 300 linear feet of an existing drainage ditch; Type of Application: U.S.C.O.E. permit application #21374 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

FEDERAL AGENCY ACTIVITIES:

Applicant: Atlantic Swordfish Fishery; Project No. 98-0443-F2; Description of Proposed Activity: Amend the regulations governing the Atlantic Swordfish Fishery to establish annual quotas for the South Atlantic swordfish stock. Additionally, NMFS proposes changes to the quota adjustment procedures.

Applicant: United States Marine Corps; Project No. 98-0444-F2; Description of Proposed Activity: The applicant proposes to construct a United States Marine Corps training facility in Galveston, Texas.

Applicant: Corps - Brays Bayou at Houston; Project No. 98-0445-F2; Description of Proposed Activity: The detention element plan includes channelization and regional detention basins in the upper watershed of Brays Bayou. The proposed plan will require excavation

of earthen material during construction of the channel modifications and detention basins. The excavated material will be placed in proposed disturbed upland sites.

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-9815001
Garry Mauro
Chairman
Coastal Coordination Council
Filed: September 23, 1998

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 09/28/98 - 10/04/98 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 09/28/98 - 10/04/98 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 10/01/98 - 10/31/98 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 10/01/98 - 10/31/98 is 10% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9814949
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 22, 1998

Texas Credit Union Department

Application for Incorporation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a new charter was received for Allied Credit Union, Houston, Texas. The proposed new credit union will serve the current and future employees of Allied Mortgage, customers of Allied Mortgage, employees of the credit union, and members of the family of such persons.

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-9814997
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: September 23, 1998

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Texas Education Agency

The Texas Education Agency adopted an amendments to 19 TAC §74.30. The rule appeared in the May 29, 1998, issue of the *Texas Register*, (23 TexReg 5675).

In §74.30(a)(5), the advanced course names "Biology, Physics, and Chemistry" should be removed.

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General Services Commission

Notice of Request for Proposals-Housing Partnership Program

Notice of Request for Proposals (RFP) for the design and implementation of projects which promote the efficient use of energy in low-to-moderate income households. In accordance with Texas Government Code, Section 2305.064 as amended by the 75th Texas Legislature, the State Energy Conservation Office (SECO) of the General Services Commission (GSC) invites proposals from partnerships of non-profit organizations, community action agencies, local governments, utility companies, public housing authorities, social service agencies, and other service related organizations serving low and moderate income individuals and families.

Low-to-moderate income households are defined as households (1) having incomes which are over 125 percent and under 175 percent of the Federal poverty level or (2) having incomes which are between 52 percent and 115 percent of the median income for a given Texas county. The maximum household income is \$35,000.

The GSC SECO administers and delivers a variety of energy efficiency programs which significantly impact energy cost and consumption in the institutional, industrial, transportation, and residential sectors. More specifically, these programs provide (1) technical resources to institutionalize energy efficiency, (2) financial assistance in completing energy retrofits, and (3) educational materials to make the public aware of the necessity for an energy efficient society. The GSC SECO has received funding from federal grants and oil over-charge court settlements. These monies have funded a myriad of energy-related programs focusing on energy efficiency.

The Housing Partnership Program (HPP) seeks to promote the efficient use of energy in low-to-moderate income households by establishing partnerships among non-profit organizations, community action agencies, local governments, utility companies, public housing authorities, social service agencies, and other service related organizations serving low and moderate income individuals and families. The HPP objectives may be met through various innovative means, including, but not limited to, training and technical assistance, energy

education workshops/seminars, housing retrofits, pilot group studies, upgrades in housing design or code standards, and model demonstration projects. Demonstration projects may be subject to U.S. Department of Energy Demonstration Project Guidelines. The HPP encourages proposals which encompass a holistic view of home energy efficiency. This RFP is not a solicitation for weatherization projects. The proposal scope of work should go beyond that of basic weatherization measures and techniques.

Copies of the RFP: To receive an information package containing the requirements and procedures regarding this RFP, contact Rene Conley, Program Administrator, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047, Phone 512-463-1770, Facsimile 512-305-8855.

Pre-Proposal Conference: All potential proposers are encouraged to attend a pre-proposal conference to be held on Wednesday, October 28, 1998, from 10:30 a.m. until 12:00 p.m. at the General Services Commission State Energy Conservation Office, located at 208 E. 10th Street, Room 212, Austin, Texas. The purpose of the meeting is to answer any questions regarding this RFP, the required format, the selection criteria, or the evaluation process. **IT IS NOT MANDATORY TO ATTEND THE PRE-PROPOSAL CONFERENCE.**

Written Questions: All questions concerning this RFP that arise after the Pre-Proposal Conference must be submitted in writing to Rene Conley, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047 or transmitted to facsimile number 512-305-8855 by 5:00 p.m. on Friday, November 6, 1998.

Closing Date: Proposals must be postmarked or received by the GSC SECO no later than 12:00 p.m. on Wednesday, November 25, 1998. Proposals received after that time and proposals submitted by facsimile will not be accepted.

Selection Criteria: Proposals will be reviewed by a committee of GSC SECO staff and/or other technical advisors. Proposals will be evaluated based on the following criteria:

- 1) **Demonstrated Experience (15 percent)** The proposal should describe the proposal team's relevant experience in (1) working to improve energy efficiency in residential households, (2) working with and delivering services to low-to-moderate income households, and (3) developing, marketing, and implementing residential energy efficiency projects and programs.
- 2) **Knowledge of Energy Efficiency/Energy Conservation Measures (20 percent)** The proposal should detail the qualifications, experience, and expertise of the proposal team with regard to energy efficiency and energy conservation measures. The proposal should detail the selection process for the various methods to be used to achieve the goal of greater energy efficiency in low-to-moderate income households.
- 3) **Action Plan (35 percent)** The proposal should effectively describe the course of action to be taken in marketing, implementing, monitoring, evaluating and modifying the project to achieve greater energy efficiency in the households of the low-to-moderate income program participants. The proposal should include plans for continuing the energy efficiency efforts beyond the SECO project period and for replicating the project in similar areas, e.g. climatic, demographic, geographic, etc.
- 4) **Ability to Assign Experienced/Qualified Personnel (15 percent)** The proposal should clearly state the experience, qualifications, and time commitments of the individuals assigned to this project.

5) Proposed Budget (15 percent) The proposal should include a budget which is reasonable in relation to the services provided. The sources of the dollar-for-dollar or in-kind match contributions should be included along with letters of support, if available.

Equal Opportunity: Any contract resulting from this RFP shall contain provisions prescribed by the GSC SECO prohibiting discrimination in employment.

TRD-9814993
Judy Ponder
General Counsel
General Services Commission
Filed: September 23, 1998



Office of the Governor

Request for Proposals

Pursuant to Subchapter A, Sections 2254.001 et. seq., Texas Government Code, the Governor's Office of Budget and Planning invites professionals with demonstrated competence and qualifications and documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 2000. These consultant services have been provided previously by the consulting firm of David M. Griffith and Associates, Ltd. (DMG). Unless a clearly superior proposal is received from different proposer, the Governor's Office intends to award the contract for the FY2000 plan to DMG, subject to negotiation of a fair and reasonable price.

Proposers will be expected to develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, preparing and submitting the plan, and negotiating the final plan with the federal government for state agency use during the state fiscal year beginning September 1, 1999. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs. Contractor may be required to prepare alternative allocation tables using different allocation bases to demonstrate maximum feasible recovery options.

As a component of the cost allocation plan, the contractor selected must also identify the costs of providing statewide support services to each state agency. This component must identify state agencies that use services from state central services agencies (for example, auditing, accounting, centralized purchasing, and legal services) in carrying out their programs and the type and dollar amount of services used. The contractor selected will be responsible for all aspects of this component, including obtaining raw cost and statistical data and identifying allocable costs. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs.

A complete set of the work papers used to prepare the plan must be kept and provided to the Governor's Office upon request. The contractor is required to provide 25 copies of the summary of fixed costs related to federal cost allocations from the completed plan and 25 copies of the summary of costs related to state cost allocations to other state agencies from the completed plan.

The Governor's Office of Budget and Planning will evaluate each proposal and reserves the right to reject any and all proposals. The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications, and ability to meet the federal filing deadline of February 28, 1999.

A copy of the FY1997 plan may be obtained by contacting Tom Adams, Governor's Office of Budget and Planning, P. O. Box 12428, Austin, Texas 78711 (telephone 512-463-1771, e-mail tadams@governor.state.tx.us).

All proposals must be received at the above address no later than 5:00 p.m., November 6, 1998.

TRD-9814776
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Filed: September 17, 1998



Texas Department of Health

Designation of Mineral Wells Pre-Parole Transfer Facility Clinic as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Mineral Wells Pre-Parole Transfer Facility Clinic located at 759 Heintzelman Road, Mineral Wells, Texas 76067. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Ann Henry, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-9814966
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 22, 1998



Designation of Saint John Hospital (Point of Light Clinic) as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Saint John Hospital (Point of Light Clinic), 2900 Dickinson Avenue, Dickinson, Texas 77539. Designation is based on proven eligibility as a site serving a

disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Ann Henry, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-9814967

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 22, 1998



Notice of Public Hearing

A public hearing regarding the proposed rules establishing a program that allows Emergency Medical Services personnel to become licensed paramedics (25 Texas Administrative Code, Chapter 157) will be held for public comments on Friday, October 9, 1998, at 9:00 a.m., in the Lecture Hall, (K-100), Texas Department of Health, 1100 West 49th Street, Austin, Texas.

Further information concerning the hearing may be obtained from, and questions directed to, Kathy Perkins, Assistant Chief, Bureau of Emergency Management, Texas Department of Health, 8407 Wall Street, Austin, Texas, 78756-3199, Telephone (512) 834-6740.

TRD-9814965

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 22, 1998



Notice of Request for Proposals for Medical Transportation Services for Medicaid-eligible Individuals to and from Allowable Medicaid Services

INTRODUCTION: The Texas Department of Health (department) requests proposals for medical transportation services for state fiscal year 1999. Proposals will be reviewed and contracts will be awarded on a competitive basis.

PURPOSE: The purpose of this program is to provide medical transportation services to Medicaid-eligible individuals who do not have any other means of transportation to and from an allowable Medicaid service. The department must ensure that transportation to and from Medicaid allowable medical services is available for all eligible clients in the state. The Medical Transportation Program (MTP) is responsible for providing necessary, nonemergency, ambulatory, and nonambulatory transportation services in a manner that is:

- (1) similar in scope and duration for all eligible clients;
- (2) consistent with the best interests of clients;
- (3) appropriate to available resources, the client's and medical facility's geographic location, and limitations of clients;
- (4) reasonably prompt;
- (5) safe;
- (6) cost-effective; and
- (7) administratively efficient.

ELIGIBLE APPLICANTS: Public and private agencies, organizations, boards, educational institutions, and county and municipal governments are eligible to apply.

AVAILABLE FUNDS: Medical transportation funds are provided by both federal and state sources. The amount of state funds allocated to the department is determined by the Texas Legislature. Funds are then allocated among the department's public health regions.

DEADLINE: Proposals prepared according to the instructions in the Request for Proposals (RFP) must be received by the appropriate regional contact person on or before December 28, 1998, 5:00 p.m. central standard time. No facsimiles or electronic documents or devices will be accepted.

EVALUATION AND AWARD CRITERIA: Each proposal will be screened for minimum eligibility and completeness. Proposals which are deemed ineligible or incomplete will not be reviewed. Proposals which arrive after the deadline will not be reviewed. Proposals will be evaluated based upon the following criteria.

- (1) client services (hours/days of operation, trip scheduling, accessibility, special needs, and experience);
- (2) administration (budget, proposed unit rate(s), service description, communication, complaints and feedback procedures);
- (3) vehicles (number per service area, number non-ambulatory per service area, location, condition of vehicles, communication equipment, child car seats, heater and air conditioner);
- (4) drivers (number and location of drivers and training); and
- (5) bonus points will be assigned for services above and beyond minimum requirements.

FOR A COPY OF THE RFP: The RFP will be available for release on October 5, 1998. To request a copy of the RFP, contact Beverly Ham, Region 01 Manager, Lubbock, Texas, telephone (806) 767-0350.

TRD-9814787

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 18, 1998



Texas Department of Housing and Community Affairs

Notice of Administrative Hearing (Docket #332-98-0327)

Legal Division

9:00 a.m., Wednesday, September 30, 1998 through Friday, October 1, 1998

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N. Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs v. Dallas County Community Action Committee, Inc. to hear testimony for the purpose of determining that cause exists for termination of its Community Services Block Grant contract.

Contact Ann M. Denman, P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-4752.

TRD-9815005

Daisy S. Stiner

Acting Executive Director

Texas Department of Housing and Community Affairs

Filed: September 23, 1998



Request for Proposals for Technical Assistance Contractors under the HUD Section 8-FHA Multifamily Mortgage Restructuring Program

Summary: The Texas Department of Housing and Community Affairs (TDHCA), through its Housing Finance Division, is accepting proposals from non-profit or for-profit entities to enter into technical assistance contracts to provide services to TDHCA in its role as a Participating Administrative Entity under the federal Section 8-FHA Multifamily Mortgage Restructuring Program (also known as the Mark-to-Market program). Technical Services to be considered may include, but are not limited to review of physical needs assessment reports, property evaluation and feasibility analyses, negotiation of loan terms and structure, and loan closing services. Applicants should be familiar with the Request for Qualifications published by the U.S. Department of Housing and Urban Development on August 17, 1998 in the Federal Register for the Fiscal Year 1999 Multifamily Housing Mortgage and Housing Assistance Restructuring Program.

Deadline for Submission: The deadline for submission in response to the Request for Proposals is 5:00 p.m. Central Standard Time, October 12, 1998. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any or all proposals submitted. The information contained in this request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offers. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Parties interested in submitting a proposal should contact Stephen Apple, Multifamily Loan Analyst, Housing Finance Division, at (512) 475-3357, 507 Sabine, Austin, Texas 78701. Communication with any member of the board of directors, the executive director, or TDHCA staff other than the Housing Finance Division concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-9814935

Daisy Stiner

Acting Executive Director

Texas Department of Housing and Community Affairs

Filed: September 21, 1998



Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by the Hochheim Prairie Insurance Group proposing to use a rating manual relative to

classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(l). They are proposing a companion policy discount of 5% on certain personal auto policy coverages when the policyholder has a property policy with a company in the Hochheim Prairie Group. The discount is applicable to liability, personal injury protection, medical payments, other than collision, specified causes of loss and collision coverages.

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 Deputy Commissioner, Automobile & Homeowners Group, David Durden, at the Texas Department of Insurance, MC 104-5A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9814929

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 21, 1998



Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

PacificCare Life and Health Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 302-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-9814988

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 22, 1998



Lamar University System

Request for Proposals

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252, 11c.

Lamar University of Beaumont, Texas, under the direction of The Texas State University System, Board of Regents, wishes to solicit proposals for the services of an independent third party to review the current job classification program, develop and assist with the design and implementation of a comprehensive job evaluation and compensation program for non-faculty positions excluding senior management.

Lamar University (LU) is a senior public university of 8,200 graduate and undergraduate students, with a workforce exceeding 1,300 individuals at the Beaumont campus.

PURPOSE

The purpose of this RFP is to develop a job evaluation and compensation plan that is both internally equitable and externally competitive while remaining within Lamar's ability to pay. Towards the goal of attracting and retaining a diverse and highly qualified workforce, Lamar desires to compensate employees fairly and at rates consistent with job content, scope, responsibility and other compensable factors.

SCOPE

This project will be inclusive of approximately 240 staff positions which are occupied by 600 employees. Of the 240 positions, 140 are classified staff positions which are typically non-exempt. In addition, 110 exempt, professional, non-faculty positions will be included. Under the guidance of the selected consultant, LU may evaluate other non-faculty positions in-house.

The LU non-faculty evaluation and compensation project for which proposals are being requested must address the essential components of a total compensation program, including but not limited to the following:

Development of a LU compensation philosophy which is linked to LU's mission and strategic plan

Review of the current position classification system and compensation program

Verification, updating and writing of job descriptions where necessary, integrating ADA and other federal and state requirements. Currently, job descriptions are available for all positions, however, consistency may be lacking between departments. Generic job descriptions do not exist.

Development and implementation of a job evaluation system.

Evaluation of positions, assignment of appropriate salary ranges, and development of a pay plan.

Verification, updating and development of guidelines for reclassifications; merit/performance reward programs; and methods for movement within a position's salary range when appropriate. This should include a method of linking the performance evaluation system to movement within the salary range/band.

Development of a plan and guidelines for implementation and maintenance of the recommended program.

Identification of strategies, both short-term and long-term, to achieve a competitive position in the relevant labor markets.

Development of cost estimates to implement the recommended compensation plan.

Development of an effective communication plan and related documents for informing employees and managers regarding the objectives and mechanics of the program.

TO RESPOND

Please contact Annette Payne, Human Resources Officer, Lamar University, P.O. Box 11127, Beaumont, Texas 77710, e-mail address: payneaf@lub002.lamar.edu, or telephone at (409) 880-8375, for more information or to request a proposal specification packet.

DEADLINE FOR PROPOSALS

All proposals will be returned to Brian Hurlbut, Purchasing Department, Lamar University, Plummer Administration Building, Room 120, MLK Parkway @ Virginia Street, Beaumont, Texas 77705. The deadline to return proposals for consulting services is November 4, 1998. Proposals received after 2:00 p.m. on November 4, 1998 will be returned unopened to the proposer.

TRD-9815018

William R. Johnson

Interim President

Lamar University System

Filed: September 23, 1998

Texas State Library and Archives Commission

Nominations for Vacancy on Local Government Records Committee

Notice is hereby given, pursuant to the Texas Government Code, §441.163 for the purpose of accepting nominations for appointment to the Local Government Records Committee.

Nominations will be accepted for 30 days from the date of the publication of this announcement to fill the ten positions on the committee: two of whom represent counties, one of whom must be a county clerk or a district clerk; two of whom represent municipalities; two of whom represent school districts; two of whom represent appraisal districts; and two of whom represent water districts. At least one committee member must be a records management officer who is not also an elected county officer. At least four members must represent either a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more.

A nomination for appointment may be made by an organization representing officers or employees of the type to be appointed that has as members at least 50 of those officers or employees. As specified by statute, a nomination made by such an organization shall include a nominee who represents a county with a population of 10,000 or more and a nominee who represents a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more. The director and librarian shall appoint a nominee or shall appoint an officer chosen by the director and librarian, if there are no nominees. The director and librarian shall appoint members to give representation to all geographical regions of the state.

All appointments to the committee will be for terms ending February 1, 2001. To remain eligible to serve on the committee, a person must continue to hold the office or position the person was appointed to represent.

Nominations should be sent to Robert S. Martin, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927.

TRD-9814745

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Filed: September 16, 1998

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted new to 30 TAC §§90.1, 90.2, 90.10, 90.12, 90.14, 90.16, 90.18, 90.20. The rules appeared in the September 11, 1998, issue of the *Texas Register*, (23 TexReg 9353).

On pages 9347 and 9353, The effective dates should have been September 20, 1998, instead of September 17, 1998.

◆ ◆ ◆

The Texas Natural Resource Conservation Commission submitted Adopted Rule Reviews, for the Texas Groundwater Protection Committee, which was published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9080).

The preamble in the third paragraph should read:

“The committee concurrently adopts amendments to §§601.2–601.5 in the Adopted Rules section of this issue of the *Texas Register*. These changes are adopted as a result of the committee’s review of the rules, and primarily address the committee’s regulatory reform goals.”

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Enforcement Orders, Week Ending September 16, 1998

An agreed order was entered regarding RICHARD KEENAN DBA K & B WATERWORKS, Docket No. 96-1614-PWS-E; PWS No. 084018; CCN No. 12084 on August 24, 1998 assessing \$9,080 in administrative penalties with \$3,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Hodgson Eckel, Staff Attorney at (512)239-2195, or Subhash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANK PRASIFKA & SONS, INC., AND HUTCHINS TIRE DISPOSAL, INC., Docket No. 97-0339-MSW-E; MSW Unauthorized Site No. 30798; Enforcement ID No. 2778 on August 24, 1998 assessing \$4,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Hodgson Eckel, Staff Attorney at (512)239-2195 or John Mead, Enforcement Coordinator at (512)239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAROTEX, INC., Docket No. 97-0304-AIR-E; TNRCC ID No. JE-0079-B; Enforcement ID No. 10045 on August 24, 1998 assessing \$28,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (512)239-2940 or Sabelyn Pussman, Enforcement Coordinator at (512)239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LIFETIME DOORS, INC., Docket No. 97-0481-AIR-E; TNRCC ID No. RI-0010-S; Enforcement ID No. 793 on August 24, 1998 assessing \$8,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary R. Risner, Staff Attorney at (512)239-6224 or Suzanne Walrath, Enforcement Coordinator at (512)239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INTERNATIONAL FAMILY MISSIONS (FORMERLY GEORGIA BACA D/B/A HOUSE OF CORNELIUS), Docket No. 96-1959-PWS-E; PWS No. 0710161; Enforcement ID No. 6337 on August 24, 1998 assessing \$3,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara L Salmanson, Staff Attorney at (512)239-1738 or Terry Thompson, Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MUTAWE & ALBANNA ENTERPRISES, INC. & BERCEASEY III, L.P., Docket No. 97-0519-PST-E; TNRCC ID No. 62795; Enforcement ID No. 11448 on August 24, 1998 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (512)239-2940 or Sushil Modak, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOBIL OIL CORPORATION, Docket No. 97-0827-AIR-E; Account No. JE-0067-I; Enforcement ID No. 10948 on August 24, 1998 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OLIVER SALES COMPANY, Docket No. 98-0242-AIR-E; Account No. DB-4692-E; Enforcement ID No. 12021 on August 24, 1998 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARTROX, INCORPORATED DBA COUNTRY BOY STORE #1, Docket No. 98-0160-AIR-E; Account No. EE-0967-M; Enforcement ID No. 12159 on August 24, 1998 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VALERO REFINING COMPANY, Docket No. 97-1033-AIR-E; Account No. NE-0112-G; Enforcement ID No. 11051 on August 24, 1998 assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TDI HALTER, INCORPORATED, Docket No. 97-0600-AIR-E; Account Nos. JE-0444-A, JE-0500-P, OC-0031-M and JE-0277-S; Enforcement ID Nos. 681, 11744, 11745 and 12450 on August 24, 1998 assessing \$85,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (512)239-2940 or Lawrence King, Enforcement Coordinator at (512)239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLAMINGO MOTORS, Docket No. 97-0798-AIR-E; TNRCC ID No. EE1827W; Enforcement ID No. 11787 on August 24, 1998 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Lazard, Staff Attorney at (512)239-0674 or Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SCOTT EVANS DOING BUSINESS AS AUTO SALES CONNECTION, Docket No. 98-0239-AIR-E; TNRCC Account No. DB-4586-E; Enforcement ID No. 11583 on August 24, 1998 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Jang, Staff Attorney at (512)239-2269 or Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEWTON COUNTY, Docket No. 97-0806-MSW-E; MSW-325; Enforcement ID No. 11793 on August 24, 1998 assessing \$33,906 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy L. Harrison, Staff Attorney at (512)239-1736 or Seyed Miri, Enforcement Coordinator at (512)239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WATER VALLEY WATER CO-OP, Docket No. 97-0564-PWS-E; PWS No. 2270030; Enforcement ID No. 11430 on August 24, 1998 assessing \$1,030 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-4113 or Tom Napier, Enforcement Coordinator at (512)239-6062, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JIM SCHUMACHER DBA WOODHAVEN MOBILE HOME PARK, Docket No. 97-0566-PWS-E; TNRCC ID No. 1330024; Enforcement ID No. 11435 on August 24, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512)239-3506 or Subhash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding WATER ASSOCIATION OF NORTH LAKE, INC., Docket No. 97-0680-PWS-E; PWS 0610171; CCN No. 12198 on August 24, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512)239-0678 or Terry Thompson, Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHANNES HERMAN DE GOEDE DBA JOHANNES HERMAN DE GOEDE DAIRY, Docket No. 97-0961-AGR-E; Enforcement ID No. 11667 on August 24, 1998 assessing \$3,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512)239-0573 or Gilbert Angelle, Enforcement Coordinator at (512)239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETER DERIDDER DBA CHALK MOUNTAIN DAIRY, Docket No. 97-1050-AGR-E; TNRCC ID No. 03290; Enforcement ID No. 9549 on August 24, 1998 assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (512)239-2940 or Claudia Chaffin, Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRISSOM BROS. OIL CO., Docket No. 98-0433-PST-E; Account No. 0020115U; TNRCC ID No. 43281 on August 24, 1998 assessing \$975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512)239-5915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Z. A. NIEHAY AND THERESA NIEHAY, Docket No. 97-0898-PST-E; TNRCC Facility ID No. 2380; Enforcement ID No. 11833 on August 24, 1998 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512)239-0573 or Sushil Modak, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MALIK DHANANI, Docket No. 97-0503-PST-E; Facility ID No. 64497; Enforcement ID No. 11481, Formerly E11733 on August 24, 1998 assessing \$10,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512)239-0678 or Srimi Kusumanchi, Enforcement Coordinator at (512)239-5874, Texas

Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PETER NGUYEN, Docket No. 97-1186-PST-E; PST Facility ID No. 48742; Enforcement ID No. 12046 on August 24, 1998 assessing \$15,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney at (512)239-0682 or Gloria Stanford, Enforcement Coordinator at (512)239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9814701

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Enforcement Orders, Week Ending September 23, 1998

An agreed order was entered regarding QUADVEST, INC, Docket No. 96-0819-PWS-E on August 26, 1998 assessing \$3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113 or Katherine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DJLJ CORPORATION D/B/ A TANK WASH SA INC, Docket No. 97-0034-IHW-E; SWR No. 73425; Enforcement ID No. 1951 on August 26, 1998 assessing \$10,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara L. Salmanson, Staff Attorney at (512) 239-1738 or Anne Rhyne, Enforcement Coordinator at (512) 239-1291, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAIDLAW ENVIRONMENTAL SERVICES (DEER PARK), INC., (FORMERLY ROLLINS ENVIRONMENTAL SERVICES (TX), INC.), Docket No. 97-0294-IHW-E; SWR No. 37328; Enforcement ID No. 1748 on August 26, 1998 assessing \$16,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara L. Salmanson, Staff Attorney at (512) 239-1738 or Anne Rhyne, Enforcement Coordinator at (512) 239-1291, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FILGO OIL COMPANY, Docket No. 96-1989-PST-E; Facility ID No. 62620; Enforcement ID No. 5369 on August 26, 1998 assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara L. Salmanson, Staff Attorney at (512) 239-1738 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amended agreed order was entered regarding CITY OF SEGUIN, Docket No. 96-1865-MSW-E; MSW Permit No. 97; Enforcement ID No. 2607 on August 26, 1998.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney at (512) 239-0682 or Seyed Miri, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HEWITT'S, INC., Docket No. 97-0544-PST-E; Facility ID No. 31748; Enforcement ID No. 11626 on August 26, 1998 assessing \$10,200 in administrative penalties with \$8,700 deferred.

Information concerning any aspect of this order may be obtained by contacting John W. Peeler, Staff Attorney at (512) 239-3506 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KESSLER INDUSTRIES, INC., Docket No. 97-0536-AIR-E; TNRCC ID No. EE-0047-R; Enforcement ID No. 277 on August 26, 1998 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary R. Risner, Staff Attorney at (512) 239-6224 or Stacey Young, Enforcement Coordinator at (512) 239-1889, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHERMAN FOUNDRY COMPANY, INCORPORATED, Docket No. 98-0087-AIR-E; GI-0058-D; Enforcement ID No. 11912 on August 26, 1998 assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LORENZO BORREGO DBA BORREGO MOTORS, Docket No. 98-0137-AIR-E; Account No. EE-0772-G; Enforcement ID No. 12101 on August 26, 1998 assessing \$450 in administrative penalties with \$90 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NATIONAL RECYCLING AND DEVELOPERS INC, Docket No. 98-0360-AIR-E; Account No. JH-0245-V; Enforcement ID No. 691 on August 26, 1998 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS PARKS & WILDLIFE DEPARTMENT, HUECO TANKS STATE HISTORICAL PARK, Docket No. 98-0136-AIR-E; Account No. EE-1706-M; Enforcement ID No. 12109 on August 26, 1998 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-

1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H & H MEAT PRODUCTS COMPANY, INCORPORATED, Docket No. 98-0105-AIR-E; Account No. HN-0051-T; Enforcement ID No. 12070 on August 26, 1998 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AUTOMOTIVE COLLISION SPECIALIST, Docket No. 97-1066-AIR-E; Account No. SI-0067-S; Enforcement ID No. 12030 on August 26, 1998 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Tel Croston, Enforcement Coordinator at (512) 239-5714, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ODELL GEER CONSTRUCTION COMPANY, INCORPORATED, Docket No. 97-1029-AIR-E; Account No. 90-6084-C; Enforcement ID No. 3 on August 26, 1998 assessing \$6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Z. Hernandez, Staff Attorney at (512) 239-0612 or Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J.C. VIRAMONTES, INC. D/B/A INTERNATIONAL GARMENT PROCESSORS, Docket No. 97-0907-AIR-E; Account No. EE-0692-F on August 26, 1998 assessing \$45,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Uselton Dyer, Staff Attorney at (512) 239-5692 or Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROWN CENTRAL PETROLEUM CORPORATION, Docket No. 97-1088-AIR-E; TNRCC ID No. HG0175D; Enforcement ID No. 451 on August 26, 1998 assessing \$1,055,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Uselton Dyer, Staff Attorney at (512) 239-5692 or Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An default order was entered regarding ADAMES MOTORS, INC., Docket No. 97-0732-AIR-E; TNRCC ID No. DB-4670-O; Enforcement ID No. 11739 on August 26, 1998 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Mary Jennings, Enforcement Coordinator at (512) 239-1864, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. ARMY CORPS OF ENGINEERS, Docket No. 98-0127-MWD-E; Permit 12093-001;

Enforcement ID No. 12141 on August 26, 1998 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRAIG PENFOLD DBA VILLAGE OAKS MOBILE HOME COMMUNITY, Docket No. 97-0637-MWD-E; TNRCC ID No. 12667-001; Enforcement ID No. 11433 on August 26, 1998 assessing \$23,760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (512) 239-2940 or Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EUGENIA BALABAN AND MIKHAILINA BALABAN, Docket No. 97-0940-MWD-E; Enforcement ID No. 11704 on August 26, 1998 assessing \$22,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0573 or Mary Smith, Enforcement Coordinator at (512) 239-4484, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH TEXAS MUNICIPAL WATER DISTRICT, Docket No. 98-0056-MWD-E; Permit No. 12446-001; Enforcement ID No. 12040 on August 26, 1998 assessing \$35,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SABINE VALLEY REGIONAL MH-MR CENTER, Docket No. 98-0029-MWD-E; Water Quality Permit No. 11361-001; Enforcement ID No. 8281 on August 26, 1998 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BILLY SANDERS, Docket No. 96-0372-AGR-E; No TNRCC Permit; Enforcement ID No. 9554 on August 26, 1998 assessing \$6,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Claudia Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETRUS HUBERTUS VAN RIJN, Docket No. 97-0891-AGR-E; Milking Operations Nos. 086105 and 086107; Enforcement ID Nos. 11662 and 11707 on August 26, 1998 assessing \$7,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara Salmanson, Staff Attorney at (512) 239-1738 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas

Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GEORGE M. FENLAW, Docket No. 97-0510-PWS-E; PWS No. 2300034 on August 26, 1998.

Information concerning any aspect of this order may be obtained by contacting Liza Z. Hernandez, Staff Attorney at (512) 239-0612 or Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES STEVENS DBA STEVENS WATER COMPANY, Docket No. 97-1041-PWS-E; PWS Nos. 2290015, 229027, 2290043, 1870059 and 1870026; CCN No. 12072; Enforcement ID No. 11818 on August 26, 1998 assessing \$7,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Jang, Staff Attorney at (512) 239-2269 or Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN LINCECUM D/B/A POWERS WATER SYSTEM, Docket No. 97-0632-PWS-E; PWS No. 0200159 on August 26, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RICHARD "RICK" SHEARER, JR. DBA SHEARER OAK KNOLL ESTATES WATER SYSTEM, Docket No. 96-1713-PWS-E; TNRCC ID No. 1010189; Enforcement ID No. 6452 on August 26, 1998 assessing \$630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Lazard, Staff Attorney at (512) 239-0674 or Wendy Rozacky, Enforcement Coordinator at (512) 239-2541, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AGUSTIN HERNANDEZ, MANUEL HERNANDEZ, AND MODESTO HERNANDEZ DOING BUSINESS AS TRIPLE H MART, AND IDA SALINAS, Docket No. 97-0893-PST-E; TNRCC ID No. 48887; Enforcement ID No. 11848 on August 26, 1998 assessing \$17,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GARY L. ROE, Docket No. 97-0861-PST-E; No TNRCC PST Registration; Enforcement ID No. 11799 on August 26, 1998 assessing \$3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Pupilampu, Staff Attorney at (512) 239-0677 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF NEWTON, Docket No. 98-0049-MSW-E; Enforcement ID No. 12129 on August 26, 1998 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Z. Hernandez, Staff Attorney at (512) 239-0612 or Seyed Miri, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CHARLES WILLIAMS DOING BUSINESS AS MA AND PA TRASH SERVICE, Docket No. 97-1126-MSW-E; TNRCC Unauthorized Site 455100021; Enforcement ID No. 11926 on August 26, 1998 assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Jang, Staff Attorney at (512) 239-2269 or Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. STORMY NATION, Docket No. 97-0540-OSI-E; No OSSF Certificate of Registration; Enforcement ID No. 12453 on August 26, 1998 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Liza Z. Hernandez, Staff Attorney at (512) 239-0612 or Karen Berryman, Enforcement Coordinator at (512) 239-6063, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN GARDNER, Docket No. 97-1114-OSS-E; Transporter Registration No. 20474; Enforcement ID No. 12031 on August 26, 1998 assessing \$5,940 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GENE LOWENTHAL, Docket No. 98-0381-OSS-E; No TNRCC Installer Certificate; Enforcement ID No. 11918 on August 26, 1998 assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney at (512) 239-0682 or Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LYLE GUNDERSON AND ROANE HARWOOD, Docket No. 97-1128-IHW-E; Enforcement ID No. 11955 on August 26, 1998 assessing \$4,960 in administrative penalties with \$992 deferred.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512) 239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. DON JONES, Docket No. 96-1872-LII-E; License No. L10001980; Enforcement ID No. 10154 on August 26, 1998 assessing \$1,500 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. ENRIQUE GALVAN, Docket No. 97-0432-LII-E; Not Licensed; Enforcement ID No. 12209 on August 26, 1998 assessing \$1,240 in administrative penalties with \$248 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. BERRY LINDEN MULFORD, Docket No. 97-0431-LII-E; License No. LI0004610; Enforcement ID No. 12208 on August 26, 1998 assessing \$1,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. MAURICE KEANE, Docket No. 97-0420-LII-E; Licensed Irrigator No. LI0002968; Enforcement ID No. 12350 on August 26, 1998 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MS. PAMELA CHEATHAM, Docket No. 96-1874-LII-E; License No. LI0004337; Enforcement ID No. 10157 on August 26, 1998 assessing \$1,400 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOSE ANGEL CARDENAS, Docket No. 96-0857-LII-E; Enforcement ID No. 3525 on August 26, 1998 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0573 or Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding JERRY HOUSE D/B/A HOUSE-CORRAL STREET WATER SYSTEM, Docket No. 96-0995-PWS-E on August 28, 1998 assessing \$1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara M. Lazard, Staff Attorney at (512) 239-3400, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding LONGVIEW REFINING ASSOCIATES, INC., Docket No. 97-066-IHW-E on September 1, 1998.

Information concerning any aspect of this order may be obtained by contacting William C. Foster, Staff Attorney at (512) 239-3407 or Kara Salmanson, Enforcement Coordinator at (512) 239-1738, Texas

Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding ASHRAF IBRAHIM, Docket No. 96-1631-PST-E on August 28, 1998 assessing \$16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Hodgson Eckel, Staff Attorney at (512) 239-2195, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FRIEND ENTERPRISES, INC., Docket No. 96-0945-PST-E on August 28, 1998 assessing \$2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara Salmanson, Staff Attorney at (512) 239-1738 or Srini Kusumanchi, Enforcement Coordinator at (512) 239-5874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9814980

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 22, 1998



Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Management Facility Permits

For the Period of August 10, 1998 to August 16, 1998

APPLICATION BY GTM WASTE PROCESSING, INC., permit amendment for a volume expansion of their existing Type V for the processing of grease and grit trap waste. The applicant proposes an increase from 20,000 gallons per day to 100,000 gallons per day. The applicant also proposes the addition of septage to the inlet waste stream for processing. The proposed site is located in Harris County, located on Hurst Street 500 ft East of the intersection of Hurst and Maxroy. The final deadline to file public comments or hearing requests will be 30 days after newspaper notice of the draft permit

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9814697

Eugenia K. Brumm, Ph.D.

Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 16, 1998



Notices of Applications for Industrial Hazardous Waste Permits/Compliance Plans and Underground Injection Control Permits

Attached are Notices of Applications issued during the period of August 3, 1998 thru August 9, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 45 days (unless otherwise noted) after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application (new permit, amendment, renewal) and permit number.

STRUCTURAL METALS INCORPORATED (SMI), Steel Mill Road, Seguin, Texas 78155 has applied for a Major Amendment to Compliance Plan No. CP-50142 which authorizes Alternate Concentration Limits for the Ground-Water Protection Standard (GWPS) and requires ground-water monitoring to verify the GWPS is not exceeded. The major amendment addresses an exceedance of the chromium GWPS downgradient of two closed RCRA-regulated landfills based upon site-specific baseline risk assessment data, require an expansion of the ground-water monitoring well system and proposes revisions to financial assurance requirements. The application was received on October 16, 1997. The facility is currently permitted for post-closure care of on-site hazardous waste disposal landfills. The facility is located on a 148-acre tract of land one mile west of the intersection of Interstate Highway I-10 and FM 464 on Steel Mill Road, Seguin, Guadalupe County, Texas. The site is within the drainage area of Segment 1804 (Lake Placid) of the Guadalupe River Basin.

USX CORPORATION - TEXAS URANIUM OPERATIONS (USX), Drawer V, George West, Texas 78022 filed an application for a modification to Production Area Authorization (PAA) UR02130-011, Clay West mine. A PAA is issued as part of the base permit (UR02130-001) to approve the initiation of mining activities in Production Area I within the permit area. The PAA application contains monitor well locations, water quality data based on pre-mining conditions for use in establishing groundwater restoration

targets, and hydrologic test data that shows connection between production wells and production zone monitor wells. The permit and PAA were issued and mining began in December 1977. Mining continued until February 1984. Restoration, using ground-water sweep and reverse osmosis, was from March 1981 to May 1997. The Clay West site is in Live Oak County approximately eight miles southwest of George West, west of U.S. Highway 59 in the J. Poitevent Survey 67, H. and G.N. R.R. Survey 69, and H. and G.N. R.R. Survey 71. The facility is an in site uranium mine in the Lower Oakville Formation, at 250 to 400 feet below the surface, undergoing groundwater restoration.

WITCO CORPORATION, P. O. Box 1439, Marshall, Texas 75671, has applied for a major amendment to Underground Injection Control (UIC) Permit No. WDW-180 which authorizes; removal of restriction on the pH of the injected waste stream; implementation of Hazardous and Solid Waste Amendments (HSWA) corrective action requirements; discontinuation of the use of EPA waste codes in description of waste streams; and monitoring of specific gravity (i.e., the ratio of the weight of a unit volume of injected waste to the weight of a unit volume of pure water) at least once every eight hours. Injection of wastes is authorized by permit below all underground sources of drinking water, into the Rodessa Formation injection interval at the approximate subsurface depth of 5,925 to 6,040 feet. WDW-180 was initially put in service in 1981. The Witco Corporation site is located at 710 Bussey Road off of U.S. Highway 59 North in Marshall, Harrison County, Texas.

URI, INC.12750 Merit Drive, Suite 1020, Dallas, Texas 75251 has filed an application for renewal of Underground Injection Control (UIC) Permit, Permit Number: WDW-250. The well (WDW-250) is used to dispose of non-hazardous wastes generated by the permittee's Rosita mine. The injection fluids consist of a variety of waste streams generated by uranium mining operations and groundwater restoration. The waste streams are required by permit to be injected into a rock formation located below all underground sources of drinking water. The well is at the Rosita uranium mining project in Duval County approximately 12 miles west of San Diego, north of Highway 44.

AKZO NOBEL CHEMICALS INC., 13000 Bay Park Road, Pasadena, Harris County, Texas 77507 has applied for Renewal of Permit No. HW-50072. The permit renewal will authorize the continued operation of one existing container storage area for the storage of hazardous and non-hazardous industrial solid waste. The application was received on December 30, 1996. The applicant operates a chemical manufacturing facility, which produces fluidized cracking catalysts, hydroprocessing catalysts, zeolite and polymer chemicals. The site is within the drainage area of Segment 1006 of the San Jacinto River Basin.

TRD-9814696
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 16, 1998



Attached are Notices of Applications issued during the period of August 10, 1998 thru August 16, 1998

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 45 days (unless otherwise noted) after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing

address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application (new permit, amendment, renewal) and permit number.

USX - TEXAS URANIUM OPERATIONS P.O. DRAWER V, GEORGE WEST, TEXAS 78022, has filed Applications for revision of the following Underground Injection Control (UIC) Production Area Authorization (PAA) UR01890-011 and UR01890-041, which were received on February 18, 1998 and declared administratively complete on March 3, 1998. The applicant requests restoration table amendments in accordance with 31 TAC 331.107, which would change the groundwater constituent concentrations that are to be met by the permittee (USX) to achieve successful restoration of the site's mined aquifer in PAA 1 and PAA 4. The Moser mine site is in Live Oak County, west of US Highway 59, ten miles southwest of George West and approximately 50 miles northwest of Corpus Christi.

TRD-9814698

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Notice of Application for Municipal Solid Waste Management Facility Permit

For the Period of August 21, 1998 to August 27, 1998

USA WASTE OF TEXAS LANDFILLS, INC., formerly known as Sanifill of Texas, Inc., 100 Genoa Red Bluff, Houston, Texas 77034, has applied for a permit amendment (Proposed Permit Amendment No. MSW 1535-B), to authorize a horizontal and vertical expansion to an existing Type I municipal solid waste management facility within the current permitted boundary of 259.39 acres. The amendment will increase the maximum height of the completed landfill from the currently permitted height of approximately 115 feet mean sea level to 140 feet mean sea level. The site will receive an estimated 1,575 tons per day and is expected to increase to an ultimate average of 1,902 tons of waste per day. The maximum daily volume of incoming waste will vary with the solid waste disposal needs of those served by the landfill and is not limited to the projected ultimate average rate. Total waste disposal volume (solid waste and daily cover) of the landfill is approximately 25,900,000 in-place cubic yards. The permittee is authorized to dispose of wastes approved for disposal at a Type I facility, including Municipal Solid Waste, Class 2 Industrial Solid Waste, Class 3 Industrial Solid Waste, Class 1 Industrial Solid Waste that is Class 1 only because of asbestos content,

and Special Waste. The site is authorized to accept municipal solid waste 24 hours a day, seven days a week, or as otherwise posted on the site sign. The facility is located in Chambers County, approximately 4.5 miles southeast of downtown Baytown, Texas at the intersection of FM 2354 and FM 1405 with access from FM 2354. The physical address is 4791 Tri-City Beach Road, Baytown, Texas 77520.

Sand Trap Service Co., Inc., dba Cold Springs Processing and Disposal, P.O. Box 1823, Fort Worth, Texas 76101 has applied for a permit amendment (Proposed Permit Amendment No. MSW1225-C). This proposed permit amendment will increase the facility capacity to receive liquid and semi-liquid wastes from 1.2 million gallons per month to 1.5 millions per month by extending the operating hours and authorize to accept Class I, nonhazardous industrial wastes under the regulatory jurisdiction of the Texas Natural Resource Conservation Commission for disposal or other processing in accordance with municipal solid waste regulations. The operating hours will be from 7:00 a.m. to 6:00 p.m. from Monday to Friday and from 7:00 a.m. to 12:00 noon on Saturday. The facility is located at 1300 Cold Springs Road, Fort Worth, approximately 2,200 feet west of State Highway 121 and 1,600 feet northwest of U.S. Highway 377 in Tarrant County, Texas.

THE CITY OF BROWNWOOD, P.O. Box 1389, Brownwood, Texas 76801, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit amendment (Proposed Permit Amendment No. MSW 1562-A) which will authorize horizontal and vertical expansion to an existing Type I municipal solid waste management facility. The amendment will increase the acreage from the currently permitted 84 acres to 648.646 acres (landfill footprint will be 130 acres) and will increase the maximum fill height of the completed landfill from the currently permitted height of approximately 1,570 feet mean sea level to 1,692.25 feet mean sea level. The site will receive an estimated average 170 tons of waste per day. The total disposal capacity of the landfill is approximately 17,000,000 in-place cubic yards. The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; municipal solid waste resulting from construction or demolition projects, Class 2 industrial solid waste, Class 3 industrial solid waste, and special wastes that are properly identified. The facility would be authorized to receive Class 1 nonhazardous industrial solid waste upon approval of a permit modification and construction of Class 1 waste cells in compliance with Title 30 Texas Administrative Code Section 330.137. The operating hours for receipt of waste at this municipal solid waste facility shall be any time between the hours specified, Sunday through Saturday, January 1 to day before first Sunday in April 7:00 a.m. to 7:00 p.m., First Sunday in April to July 13 7:00 a.m. to 8:30 p.m., July 14 to day before last Sunday in October 7:00 a.m. to 7:30 p.m. The waste management facility is located on County Road 237 (Indian Creek Road) approximately 1.5 miles south of FM 45 in Brown County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35

TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9814694

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Notices of Applications for Waste Disposal/Discharge Permits

Attached are Notices of Applications for waste disposal/discharge permits issued during the period of July 27, 1998 to August 2, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

Warren Independent School District, P.O. Box 69, Warren, Texas 77664; The plant site is located south of Farm-to-Market Road 1943 and east of Blue Berry Hill Drive in Tyler County, Texas; renewal Permit No. 11307-001.

City of Rusk, 408 North Main Street, Rusk, Texas 75785; The plant site is located at 0.35 mile west of Farm-to-Market Road 752 and approximately 1.5 miles south of mid-town Rusk in Cherokee County, Texas; renewal Permit No. 10447-001.

City of Houston, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549; The plant site is located at 2525 S. Sgt. Macario Garcia on the north bank of Buffalo Bayou in the City of Houston in Harris County, Texas; renewal Permit No. 10495-090.

City of Jefferson, 102 North Polk Street, Jefferson, Texas 75657; The plant site is located at the corner of Austin Street and Soda Street, just east of downtown Jefferson, on the west bank of Big Cypress Bayou in Marion County, Texas; renewal Permit No. 10801-002.

City of Crystal City, 101 E. Dimmit, Crystal City, Texas 78839-3523; The plant site is located at the terminus of Plant Street approximately 0.2 mile northwest of the intersection of Plant Street and U.S. Highway 83, approximately 2 blocks west of the intersection of State Highway 393 and U.S. Highway 83, northwest of the City of Crystal City in Zavala County, Texas; renewal Permit No. 10098-001.

StyroChem International, Inc., 11591 Business Highway 287 North, Fort Worth, Texas 76179; The plant site is located at 11591 Business Highway 287 North, northwest of the intersection of Peden Road and Business Highway 287 North, approximately 7 miles north of the City of Saginaw, Tarrant County, Texas; Proposed Permit No. 03983

City Public Service of San Antonio, P. O. Box 1771, San Antonio, Texas 78296; The plant site is located at 16120 Streich Road, approximately 2.75 miles northwest of the City of Elmendorf, Bexar County, Texas; renewal Permit No. 01515.

City of Marion, P.O. Box 158, Marion, Texas 78124; The plant site is located approximately 1,400 feet west of Farm-to-Market Road 465 and 1,800 feet south of Farm-to-Market Road 78 in southwest Marion in Guadalupe County, Texas; renewal Permit No. 10048-001.

U.S. Department of the Air Force, AFBCA/DC-Reese, 9801 Reese Boulevard North, Suite 300, Lubbock, Texas 79416; The facility and disposal area are located on Farm-to-Market Road 2255 west of and adjacent to the City of Lubbock, Lubbock County, Texas; major amendment Permit No. 02768.

Texas Utilities Electric Company, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411; The plant site is located on the north shore of Trinidad Lake off Farm-to-Market Road 764, approximately one mile south of the City of Trinidad, Henderson County, Texas; renewal Permit No. 00947.

DPC Industries, Inc., P. O. Box 24600, Houston, Texas 77229-4600; The plant site is located adjacent to State Highway 149, and approximately 11,500 feet southeast of the intersection of State Highway 149 and Farm-to-Market Road 2906 on the southeast of the City of Longview, Gregg County, Texas; Proposed Permit No. 03986.

City of West University Place, 3800 University Blvd., Houston, Texas 77005; The plant site is located approximately 1000 feet west of Kirby Drive between Brays Bayou and North Brayswood Street in the City of Houston in Harris County, Texas; renewal Permit No. 10058-001.

Walter Joseph Sauder, San Miguel Springs Water Co., 128 H.M. Roundtree, San Antonio, Texas 78233; The plant site is located approximately one and one-half (1.5) miles south of the intersection of Farm-to-Market Road 758 and State Highway 46 in Guadalupe County, Texas; Proposed Permit No. 13923-001.

Trinity Rural Water Supply Corporation, P.O. Box 709, Trinity, Texas 75862; The plant site is located on the east side of Farm-to-Market Road 355, approximately 4.5 miles south of the City of Groveton in Trinity County, Texas; Proposed Permit No. 13950-001.

Kobra Mirhaj, P.O. Box 55528, Houston, Texas 77255; The plant site is located at 6341 East Mount Houston Road, approximately 600 feet north of East Mount Houston Road and approximately 1.3 miles west of the intersection of Farm-to-Market Road 527 and East Mount Houston Road in Harris County, Texas; Proposed Permit No. 13955-001.

Toshiba International Corporation, 13131 W. Little York Drive, Houston, Texas 77041; The plant site is located at the southeast corner of the intersection of West Little York Drive and Eldridge Parkway, Harris County, Texas; renewal of Permit No. 03153.

Azle Independent School District, 300 Roe Street, Azle, Texas 76020; The wastewater treatment facility and disposal site are located approximately 3.5 miles southwest of the Town of Azle and adjacent to and east of Farm-to-Market Road 730 in Parker County, Texas; renewal Permit No. 13304-001.

City of Iowa Park, 103 North Wall, Iowa Park, Texas 76367-0190; The plant site is located southwest of the City of Iowa Park, approximately 0.25 mile west of Farm-to-Market Road 368 and 1 mile north of Farm-to-Market Road 367 in Wichita County, Texas; renewal Permit No. 10691-002.

Clint Independent School District, P.O. Box 779, Clint, Texas 79836; The wastewater treatment facility and disposal site are located approximately 3.5 miles east-southeast of the intersection of U.S. Highway 62/180 and Farm-to-Market Road 659 (Zaragosa Road) on the campus of Clint High School in El Paso County, Texas; renewal Permit No. 13441-001.

North Texas Municipal Water District, P.O. Box 2408, Wylie, Texas 75098; The plant site is located at 806 Alanis Drive, approximately 0.4 mile southeast of State Highway 78, approximately 0.57 mile south of the crossing of Muddy Creek by State Highway 78, and 1.25 miles southwest of the City of Wylie central business district in Collin County, Texas; renewal of Permit No. 10384-001.

City of Royse City, 124 Arch Street, Royse City, Texas 75189; The plant site is located approximately one (1) mile south of the intersection of Interstate Highway 30 and Farm-to-Market Road 35 in Rockwall County, Texas; renewal of Permit No. 10366-001.

City of Houston, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549; The plant site is located at 7410 Galveston Road (State Highway No. 3) in the City of Houston in Harris County, Texas; major amendment Permit No. 10495-050.

City of Teague and City of Fairfield, 222 South Mount Street, Fairfield, Texas 75840; The plant site is located approximately 1.1 miles south of the intersection of U.S. Highway 84 and Boyd Prison Road and approximately 3.4 miles southwest of the intersection of U.S. Highway 84 and Interstate Highway 45 in Freestone County, Texas; renewal Permit No. 13579-001.

Air Liquide America Corporation, P.O. Box 3047, Houston, Texas 77253; The plant site is located on the north side of West Little York Road approximately 4000 feet east of Eldridge/Addicks-Fairbanks Road in Harris County, Texas; renewal Permit No. 13959-001.

Texas Department of Criminal Justice, P.O. Box 4011, Huntsville, Texas 77342; The plant site is located approximately 3 miles north of the intersection of Farm-to-Market Road 2004 and State Highway 332, approximately 4 miles southeast of the intersection of State Highway 35 and Farm-to-Market Road 521 in Brazoria County, Texas; renewal Permit No. 10829-001.

Wildwood Property Owners Association, P.O. Box 903, Village Mills, Texas 77663; The plant site is located at the corner of Balsawood and Chestnut Streets in the community of Wildwood; approximately 0.25 mile south of Lake Kimble and approximately 2.5 miles west of the intersection of U. S. Highways 69 and 287 and Farm-to-Market Road 3063 in Hardin County, Texas; renewal Permit No. 11184-001.

City of Houston, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549; The plant site is located at 5565 Kirkpatrick in the City of Houston in Harris County, Texas; renewal Permit No. 10495-023.

City of Littlefield, P.O. Box 1267, Littlefield, Texas 79339-1267; The wastewater treatment facility and one disposal site are located on the

north side of Farm-to-Market Road 54 and approximately 1.4 miles east of the intersection of U.S. Highway 385 and Farm-to-Market Road 54 in Lamb County, Texas. The second disposal site is located on the south side of Farm-to-Market Road 54 and approximately 1.4 miles east of the intersection of U.S. Highway 385 and Farm-to-Market Road 54 in Lamb County, Texas. The third disposal site is located south of County Road 272 and approximately 1.5 miles east of the intersection of U.S. Highway 385 and County Road 272 in Lamb County, Texas; a major amendment Permit No. 10207-002.

Cypress Hill Municipal Utility District No. 1, c/o Fulbright & Jaworski, 1301 McKinney Street, Suite 5100, Houston, Texas 77010; The plant site is located approximately 400 feet west of Cypress Rose Hill Road and 3/4 mile north of the intersection of Cypress Rose Hill Road with U.S. Highway 290 in Harris County, Texas; major amendment Permit No. 12327-001.

Leon Springs Utility Company, 10 Dominion Drive, San Antonio, Texas 78257; The plant site is located in the southwest corner of the Dominion Subdivision, adjacent to Leon Creek and approximately 3.5 miles north of the intersection of Interstate Highway 10 and Loop 1604 in Bexar County, Texas; renewal Permit No. 12557-001.

Pine Tree Mobile Home Park Landowners Association, 5622 Dyer, Dallas, Texas 75206; The plant site is located approximately one mile west of the City of Keller and approximately one mile southwest of the intersection of Keller-Hicks Road and U.S. Highway 377 in Tarrant County, Texas; renewal Permit No. 13036-001.

City of Sundown, P.O. Box 600, Sundown, Texas 79372-0600; The wastewater treatment facilities and disposal site are located 1 mile northwest of the intersection of Farm-to-Market Road 301 and Farm-to-Market Road 303 in Hockley County, Texas; renewal Permit No. 11253-001.

Orbit Systems, Inc., 1302 Airline North, Rosharon, Texas 77583; The plant site is located approximately two miles east of the City of Angleton, on the southwest quadrant of the intersection of County Road 213 and County Road 598 in Brazoria County, Texas; renewal Permit No. 12420-001.

Waterwood Municipal Utility District No. 1, c/o Mr. Phil Palmer, Palmer Management Company, Waterwood Box 2, Huntsville, Texas 77340; The wastewater treatment facility is located approximately 0.1 mile south of Waterwood Parkway at a point approximately 1.0 mile east of the intersection of Waterwood Parkway and Farm-to-Market Road 980 and approximately 6 miles north of the intersection of Farm-to-Market Road 980 and State Highway 190; renewal Permit No. 11447-001.

Sea Lion Technology, Inc., P.O. Box 1807, Texas City, Texas 77592; The plant site is located at 5700 Johnny Palmer Road in the City of Texas City, Galveston County, Texas; Major amendment Permit No. 03479.

Knox Oil of Texas, Inc, 5001 LBJ Freeway, Suite 1020 Dallas, Texas, 75244; The plant site is located approximately 500 feet south of the intersection of Interstate Highway 35 and Farm-to-Market Road 310 on the west side of Interstate Highway 35 in Hill County, Texas; renewal Permit No. 12945-001.

Theron I. Moore, Sr., 8610 FM 2457, Livingston, Texas 77351; The plant site is located on Kalita Drive in the Kalita Point Subdivision, near the east shore of Lake Livingston, approximately 1,250 feet north to Farm-to-Market Road 2457 at a point approximately 3 miles west of the intersection of Farm-to-Market 2457 and U.S. Highway 190 in Polk County, Texas; renewal Permit No. 11465-001.

New Caney Municipal Utility District, P.O. Box 1799, New Caney, Texas 77357; The plant site is located approximately 0.4 mile east and 1.6 miles south of the intersection of Caney Creek and Interstate Highway 59 in Montgomery County, Texas; renewal of Permit No. 12274-001.

TRD-9814695

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Attached are Notices of Applications for waste disposal/discharge permits issued during the period of August 3, 1998 to August 9, 1998

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

Otto Marine Enterprise, Inc., 18001 I-10 East, Channelview, Texas 77530; The plant site is located at 17818 Riverside Street, one-fourth mile south of Interstate Highway 10 and one mile west of the intersection of Interstate Highway 10 and Crosby-Lynchburg Road, Harris County, Texas; major amendment to Permit No. 03448.

FKP, Inc., 1955 Lake Park Drive, Suite 250, Smyrna, Georgia 30080; The plant site is located on the Houston Ship Channel, at the point where Jefferson Road terminates at the Houston Ship Channel, in the City of Pasadena, Harris County, Texas; Proposed Permit No. 03999.

City of Austin, c/o Director, Water and Wastewater Utility, P.O. Box 1088, Austin, Texas 78767-8859; The plant site is located north of the Colorado River approximately one mile east of the U.S. Highway 183 crossing of the Colorado River in Travis County, Texas; renewal Permit No. 10543-003.

City of Farwell, P.O. Box 338, Farwell, Texas 79325; The wastewater treatment facilities and disposal site are located approximately 1/4 mile east of the City of Farwell and immediately north of the Panhandle and Sante Fe Railroad in Parmer County, Texas; renewal of Permit No. 10661-001.

City of Quitaque, P.O. Box 427, Quitaque, Texas 79255; The wastewater treatment facilities and disposal site are located approximately 4,500 feet east-northeast of the intersection of State Highway 86 and Farm-to-Market Road 1065 and 1,200 feet north of State Highway 86, east of the City of Quitaque in Briscoe County, Texas; renewal Permit No. 10727-001.

City of Lorenzo, P.O. Box 430, Lorenzo, Texas 79453; The wastewater treatment facilities and disposal site will be located northeast of the City of Lorenzo, approximately 1.5 miles northeast of the intersection of U.S. Highway 82 and State Route 378 in Crosby County, Texas; Proposed Permit No. 10988-002.

City of Pearland, 3519 Liberty Drive, Pearland, Texas 77588; The plant site will be located approximately 0.25 mile east and 1 mile north of the intersection of County Road 101 (Bailey Road) and County Road 103 (Harkey Road) in the City of Pearland in Brazoria County, Texas; Proposed Permit No. 10134-007.

Citgo Products Pipeline Company, P.O. Box 3758, Tulsa, Oklahoma 74102-3758; The plant site is located at 3301 State Highway 157 in the City of Fort Worth, Tarrant County, Texas; Proposed Permit No. 03993.

The City of Midway, P.O. Box 227, Midway, Texas 75852; The plant site is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas; renewal Permit No. 13378-001.

Munson Point Property Owners Association and John Munson, P.O. Box 357, Denison, Texas 75021-0357; The wastewater treatment facilities and disposal site are located approximately 1,000 feet east and 2,500 feet south from the north end of State Highway 84 in Garyson County, Texas; renewal of Permit No. 13823-001.

City of Muleshoe, 215 S. 1st Street, Muleshoe, Texas 79347; The wastewater treatment facilities and disposal site are located approximately 1.5 miles south of the intersection of State Highway 214 and S. Highway 84 in Bailey County, Texas; renewal Permit No. 10049-001.

North Belt Utility District, c/o Smith, Murdaugh, Little & Bonham, 1100 Louisiana Street, Suite 400, Houston, Texas 77002; The plant site is located at 15353 Weldon Drive, approximately 1,600 feet northwest of the intersection of Aldine-Westfield Road and Beltway 8 in Houston, Harris County, Texas; renewal Permit No. 11597-001.

Texas A & M University, Physical Plant Building, Agronomy Road, College Station, Texas 77843-1371; The plant site is located approximately 14,000 feet south of the intersection of Farm-to-Market Road 60 and Farm-to-Market Road 2818, 11,000 feet southwest of Farm-to-Market Road 2818 and 9,000 feet southeast of Farm-to-Market Road 60 in Brazos County, Texas; renewal Permit No. 10968-003.

City of Houston, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549; The plant site is located at 8545 Scranton Street, due east of William P. Hobby Airport, approximately 0.7 mile southwest of the intersection of Interstate Highway 45 (Gulf Freeway) and Airport Boulevard in Harris County, Texas; renewal of Permit No. 10495-065;

Richard L. Wagner, P.O. Box 187, Willis, Texas 77378; The plant site is located on Lake Conroe's western shore, north of and with access to Farm-to-Market Road 1097, approximately 7.6 miles west of Willis in Montgomery County, Texas; renewal of Permit No. 13575-001.

Wilke Lane Utility Company, 205 East 43rd Street, Austin, Texas 78751-3805; The plant site is located approximately 0.5 mile northeast of the intersection of Pflugerville Loop and Wilke Lane, approximately 2 miles north of the Pflugerville central business district in Travis County, Texas; renewal Permit No. 13019-001.

City of Winfield, P.O. Box 98, Winfield, Texas 75493; The plant site is located approximately 400 feet north of the Interstate Highway 30 access road and 1500 feet west of Farm-to-Market Road 1734 in Titus County, Texas; renewal Permit No. 12146-001.

City of Shepherd, P.O. Box 248, Shepherd, Texas 77371, The plant site is located approximately 1,400 feet northeast of the intersection of U.S. Highway 59 and State Highway 150 in San Jacinto County, Texas; renewal Permit No. 11380-001.

North Zulch Municipal Utility District, P.O. Box 118, North Zulch, Texas 77872; The wastewater treatment facilities and disposal site are located approximately 0.5 mile northeast of the intersection of State Highway 21 and Loop 160, approximately one mile east of Farm-to-Market Road 39 in Madison County, Texas; renewal of Permit No. 12192-001.

Texas Utilities Electric Company, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411; The plant site is located at 2233-A Mountain Creek Parkway in the City of Dallas, Dallas County, Texas; renewal of Permit No. 01250.

TRD-9814693

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Attached are notices of applications for waste disposal/discharge permits issued during the period of August 10, 1998 to August 16, 1998

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

City of Van, P.O. Box 487, Van, Texas 75790; The plant site is located immediately north of Interstate Highway 20 and on the west side of

Big Sandy Creek approximately 1 mile east of the intersection of Interstate Highway 20 and Farm-to-Market Road 314 in Van Zandt County, Texas; renewal Permit No. 10376-001.

Mary Sue Warren, 120 Oak Leaf Drive, North Richland Hills, Texas 76180; The plant site is located at 140 Oak Leaf Drive, approximately 0.2 mile west of Precinct Line Road (Farm-to-Market Road 3029), approximately 2 miles northwest of State Highway 26, approximately 2.75 miles north of the intersection of State Highway 26 and Precinct Line Road (Farm-to-Market Road 3029), and approximately 13 miles northeast of the City of Fort Worth central business district, in North Richland Hills in Tarrant County, Texas; renewal Permit No. 11175-001.

Harris County Municipal Utility District No. 119, 3800 First City Tower- 1001 Fannin Street, Houston, Texas 77002; The plant site is located approximately 1.6 miles south of the intersection of the North Houston-Rosslyn Road and Farm-to-Market Road 149, 4.9 miles due west of the intersection of Farm-to-Market Road 149 and Interstate Highway 45 on the east side of the North Houston-Rosslyn Road, and approximately 13 miles northwest of the City of Houston central business district in Harris County, Texas; renewal Permit No. 12714-001.

Aquila Realty Fund I, Inc., 2015 52nd Street, Brooklyn, New York 11204; The plant site is located at 1300 Hugh Road, approximately 1,300 feet west of the intersection of Spears Road and Hugh Road, and approximately one mile north of the intersection of Greens Road and Spears Road in Harris County, Texas; renewal Permit No. 13617-001.

City of Aspermont, P.O. Box 277, Aspermont, Texas 79502-0277; The wastewater treatment facilities and disposal site are located approximately 0.75 mile west of the intersection of Vivian Avenue and North Second Street north of the City of Aspermont in Stonewall County, Texas; renewal Permit No. 10141-001.

E.I. du Pont de Nemours and Company, P.O. Box 3269, Beaumont, Texas 77704; The plant site is located on State Highway 347, on the west bank of the Neches River at the McFaddin Bend Cutoff, six miles south of the City of Beaumont, and eight miles north of Sabine Lake, Jefferson County, Texas; major amendment Permit No. 00473.

City of Seabrook, 1700 First Street, Seabrook, Texas 77586; The plant site is located adjacent to the intersection of Second Street and Todville Street in the City of Seabrook in Harris County, Texas; renewal Permit No. 10671-001.

Thirty Two Real Estate Investment, Ltd., P.O. Box 525, Willis, Texas 77378; The plant site is located approximately 100 feet south of Farm-to-Market Road 1097 and 0.25 mile east of Lake Conroe in Montgomery County, Texas; renewal Permit No. 13395-001.

City of Blanco, P.O. Box 750, Blanco, Texas 78606; The plant site is located approximately 0.8 mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1623 in Blanco County, Texas; major amendment Permit No. 10549-002.

City of Bryson, P.O. Box 219, Bryson, Texas 76427; The Imhoff tank and sludge drying beds are located on the east side of a gravel road known as Lovers Lane, 0.5 mile south of the intersection with U.S. Highway 380 in Jack County, Texas renewal Permit No. 10135-001.

A & D Corley Enterprises, LTD., 3570 Vancouver Drive, Dallas, Texas 75229-3854; The plant site is located at 294 Country Club Road, approximately 1.25 miles northeast of the intersection of U.S. Highway 377 and Country Club Road in Denton County, Texas; renewal of Permit No. 13401-001.

City of Nome, P.O. Box D, Nome, Texas 77629; The plant site is located adjacent to Cotton Creek and at the intersection of 3rd Street and Cotton Creek, and approximately 0.5 mile north of the City of Nome in Jefferson County, Texas; major amendment Permit No. 11564-001.

Lee J. Marsalise and Carl Marsalise, 1430 Frontier Valley Drive, Austin, Texas 78741; The wastewater treatment facility and disposal site will be located approximately 1000 feet north of the intersection of United States Highway 290 and Farm-to-Market Road 1100, adjacent to the intersection of Voelker Lane and Farm-to-Market Road 1100 and approximately 2 miles east of New Katy, in Travis County, Texas; Proposed Permit No. 13906-001.

Lake Fork Resort, LLC, 237 Hide-A-Way Lane East, Lindale, Texas 75140; The plant site is located approximately 700 feet east of Farm-to-Market Road 17 and 0.3 mile south of Farm-to-Market Road 515 in Wood County, Texas; Proposed Permit No. 13975-001.

Tommy J. Thomas, 9813 Deer Trail, Houston, Texas 77038-3205; The plant site is located on the 9800 Block of Deer Trail Drive approximately one mile northwest of the intersection of Farm-to-Market Road 149 and Interstate Highway 45 in Harris County, Texas; renewal of Permit No. 12919-001.

Spring Independent School District, 16716 Ella Blvd., Houston, Texas 77090-4299; The plant site is located approximately two (2) miles north of Farm to Market (FM) 1960 on Hardy Road at Lemm Road #1 south of the community of Spring, Harris County, Texas; renewal of Permit No. 02483.

City of New Summerfield, P.O. Box 38, New Summerfield, Texas 75870; The plant site is located on the west side of Haws Road, 1 mile north of U.S. Highway 79 near New Summerfield in Cherokee County, Texas; renewal of Permit No. 13585-001.

Texas Department of Criminal Justice, P.O. Box 4011, Huntsville, Texas 77344; The plant site is located approximately 3,500 feet northwest of the intersection of State Highway 6 and U.S. Highway 90A in Fort Bend County, Texas; renewal Permit No. 10986-001.

SDGA Corporation, 1420 Marina Bay Drive, Kemah, Texas 77565; The plant site is located approximately 1,650 feet north of Research Forest Drive and 6,100 feet west of Interstate Highway 45, west of the City of Shenandoah in Montgomery County, Texas; Proposed Permit No. 13970-001.

Vulcan Materials Company, P.O. Box 791550, San Antonio, Texas 78279; The plant site is located at: crushing operation - adjacent to County Road (CR) 228 approximately « mile north of the intersection of CR 228 and CR 234; mining operation - immediately south of the intersection of CR 228 and CR 234, near the City of Tehuacana, Limestone County, Texas; major amendment Permit No. 03806.

TRD-9814692

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Attached are notices of applications for waste disposal/discharge permits issued during the period of August 17, 1998 to August 23, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

San Antonio Water System, P.O. Box 2449, San Antonio, Texas 78298-2449; The plant site is located approximately on Valley Road near the confluence of the San Antonio and Medina Rivers approximately one mile west of Interstate Highway 37 and 2.25 miles east of Farm-to-Market Road 1937 in Bexar County, Texas; renewal of Permit No. 10137-033.

Stolthaven Houston, Inc., P.O. Box 96438, Houston, Texas 77213-6438; The plant site is located on the north side of the Houston Ship Channel, one mile east of Beltway 8 on the south side of Jacinto Port Boulevard in the City of Houston, Harris County, Texas; renewal of Permit No. 03129.

Pilgrim's Pride Corporation, P.O. Box 93, Pittsburg, Texas 75686; The plant site is located southwest of the City of Mount Pleasant on the north side of Farm-to-Market Road 127 and approximately 500 feet east of Tankersley Creek, Titus County, Texas; major amendment Permit No. 03017.

Texas Department of Criminal Justice, P.O. Box 4011, Huntsville, Texas 77342; The plant site is located outside the northwest corner of the security compound of the Clemens Unit, approximately 0.5 mile north of the intersection of State Highway 36 and Farm-to-Market Road 2004, and approximately 5.0 miles southeast of the City of Brazoria in Brazoria County, Texas; major amendment Permit No. 10878-001.

Domco Inc. Floor Products (Texas), P.O. Box 3145, Houston, Texas 77253-3145; The plant site is located at 1705 North Oliver Street in the City of Houston, Harris County, Texas; major amendment Permit No. 00785.

City of Garland, P.O. Box 469002, Garland, Texas 75046-9002; The plant site is located on the north side of State Highway 66, approximately 2000 feet east of the intersection of State Highway 66 and State Highway 78 in the City of Garland, Dallas County, Texas; renewal Permit No. 03519.

Trailcreek Enterprises, Inc. 264 MM Park, Justin, Texas 76247; The plant site is located approximately 500 feet east of the intersection of Trail Creek and State Highway 156 and 800 feet south of the City of Justin's existing sewage treatment facility in Denton County, Texas; Proposed Permit No. 13928-001.

TRD-9814691

Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 16, 1998



Attached are notices of applications for waste disposal/discharge permits issued during the period of August 17, 1998 to August 23, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

GERARD HOEKMAN, Rt.2, Box 161, Dublin, Texas, 78446. This facility is located approximately 8 miles east of Comanche, Texas on the north side of Farm-to-Market Road 591; The site is approximately 1.5 miles east of the intersection of Farm-to-Market Road 1476 and Farm-to-Market Road 591 in Comanche County, Texas; Amendment to Permit No. 03808.

ELMER J. PARKS, Route 1, Box 94, Stephenville, Texas, 76401; This facility is located on the south side of Farm-to-Market Road 8, approximately one mile east of the intersection of Farm-to-Market Road 8 and Farm-to-Market Road 219 in Erath County, Texas; Renewal of Permit No. 03590.

DAR ANDERSON, Route 1 Box 160, Dublin, Texas, 76446; This facility is located on an unnamed county road approximately four miles southwest of the intersection of Farm-to-Market Road 2823 and Farm-to-Market Road 1702; Amendment to Permit No. 03279.

DENNIS AND SHERI HAKES, Route 5 Box 198, Dublin, Texas, 76446; This facility is located approximately one half mile south of State Highway 6 on Farm-to-Market Road 914, southeast of the community of Alexander in Erath County, Texas; Amendment to Permit No. 03087.

PAUL VAN LEEUWEN, Rt. 4, Box 195F, Dublin, Texas, 76446; This facility is located on the west side of Farm-to-Market Road 219 approximately 3 miles south of the intersection of Farm-to-Market Road 8 and Farm-to-Market Road 219 in the community of Lingleville, Erath County; New Permit No. 04024.

TRD-9814699

Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 16, 1998



Attached are notices of applications for waste disposal/discharge permits issued during the period of August 24, 1998 to August 30, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerk's Office-MC105, P.O. Box 13087, Austin, Texas, 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

HOUSTON ROAD MUNICIPAL UTILITY DISTRICT, 333 Clay Avenue, 8th Floor, Houston, Texas, 77002; the plant site is located approximately 1.3 miles northwest of the intersection of Farm-to-Market Road 149 (West Mount Houston Road) and Stuebner Airline Road, on the east bank of Halls Bayou in Harris County, Texas; Renewal of Permit No. 11154-001.

CITY OF TOMBALL, 401 W. Market, Tomball, Texas, 77375; The plant site is located south of Holderrieth Road approximately 2,100 feet north of Willow Creek and approximately 4,300 feet east of the intersection of State Highway 249 and Holderrieth Road in Harris County, Texas; New permit, Proposed Permit No. 10616-002.

FRUITVALE INDEPENDENT SCHOOL DISTRICT, P.O. Box 77, Fruitvale, Texas, 75127; The plant site is located approximately 1,200 feet northeast of the intersection of U.S. Highway 80 and Farm-to-Market Road 1910 and approximately 2.1 miles east of the intersection of U.S. Highway 80 and State Highway 19 in Van Zandt County, Texas; Renewal of Permit No. 12369-001.

CITY OF O'DONNELL, P.O. Box 236, O' Donnell, Texas, 79351; The wastewater treatment facilities and disposal site are located immediately west of the intersection of U.S. Highway 87 and Farm-to-Market Road 2053 in Lynn County, Texas; Renewal of Permit No. 11126-001.

CITY OF BLOOMBURG, P.O. Box 198, Bloomburg, Texas, 75556; The plant site is located approximately 200 feet south of the intersection of Anthony and Louisiana Streets in Cass County, Texas; New permit, Proposed Permit No. 13930-001.

CITY OF LAKESIDE CITY, P. O. Box 4287, Wichita Falls, Texas, 76308; The wastewater treatment facilities and disposal site are located approximately 2.5 miles south of the Wichita Falls State Hospital and 7000 feet southeast of the intersection of State Highway 79 and Farm-to-Market Road 1954 in Archer County, Texas; Renewal of Permit No. 13253-001.

FOREST GLEN, INC., No. 3 Forest Glen, Huntsville, Texas, 77340; The plant site is located approximately 6 miles southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 2296 in Walker County, Texas; Renewal of Permit No. 11844-001.

AUSTWELL AQUA FARM, Inc., P.O. Box 125, Austwell, Texas, 77950; The plant site is located adjacent to Farm-to-Market Road 2040 approximately 3 miles southeast of the City of Austwell, Refugio County, Texas; New permit, Proposed Permit No. 03995.

UNITED STATES DEPARTMENT OF THE AIR FORCE, 47th Civil Engineering Squadron, Laughlin Air Force Base, Texas, 78843; The plant site is located on the southwest section of Laughlin Air Force Base, approximately 2.3 miles northeast of the intersection of U.S. Highway 277 and Spur 317, east of the City of Del Rio, in Val Verde County, Texas; Renewal of Permit No. 12651-001.

TEXAS DEPARTMENT OF TRANSPORTATION, 3128 State Highway 62 North, Orange, Texas, 77632; The plant site is located approximately 3,000 feet east of Cow Bayou, on the south side of Interstate Highway 10 between the cities of Vidor and Orange in Orange County, Texas; Major amendment to Permit No. 11457-001.

AIR LIQUIDE AMERICA CORPORATION, 901 West Oakdale, Grand Prairie, Texas, 75050; The plant site is located at 901 West Oakdale in the City of Grand Prairie, Dallas County, Texas; New permit, Proposed Permit No. 04008.

KEITH BLAIR, #2 Lake Fork Marina, Alba, Texas, 75410; The plant site is located approximately 1.0 mile south of the intersection of Farm-to-Market Roads 515 & 17; approximately 5.0 miles north of the intersection of Farm-to-Market Road 17 and State Highway 182 in Wood County, Texas; Renewal of Permit No. 12960-001.

LAKEWAY MUNICIPAL UTILITY DISTRICT, 1097 Lohmans Crossing Road, Austin, Texas, 78734; The plant site is located approximately 2.0 miles northwest of the intersection of Ranch Road 620 and Lohmans Crossing Road in Travis County, Texas; Major amendment to Permit No. 11495-003.

TEXAS A&M UNIVERSITY, FE Box 275 (MS 1584), College Station, Texas, 77843; The plant site is located between Asbury and Ireland Streets at the Ross Street intersection on the Texas A&M University main campus in the City of College Station, Brazos County, Texas; New permit (Proposed Permit No. 04002).

VARCO SHAFFER, Inc., P.O. Box 1473, Houston, Texas, 77251; The plant site is located at 12950 West Little York, one-fourth mile northeast of the intersection of Addicks Fairbanks Road and West Little York Road, in the City of Houston, Harris County, Texas; New permit, Proposed Permit No. 03994.

CHEMICAL DISTRIBUTORS, INC., 18501 East Highway 6, Algoa, Texas, 77511-8453; The plant site is located 0.9 miles southeast of the Brazoria/Galveston county line on State Highway 6 and southeast of the City of Algoa, Galveston County, Texas; Renewal of Permit No. 03474.

AIR LIQUIDE AMERICA CORPORATION, P. O. Box 2487, Freeport, Texas, 77541; The plant site is located on the west side of Farm-to-Market 523, near the intersection of Farm-to-Market 523

and State Highway 332, approximately two miles north of the City of Freeport, Brazoria County, Texas; Renewal of Permit No. 01954.

BCD SERVICES, INC., P.O. Box 570177, Houston, Texas, 77257; The plant site is located approximately 1500 feet south of U.S. Highway 90, on the eastern bank of Cedar Bayou in Liberty County, Texas; Renewal of Permit No. 12344-001.

HARDIN INDEPENDENT SCHOOL DISTRICT, P.O. Box 330, Hardin, Texas, 77561-0330; The plant site is located on the Hardin ISD High School campus, approximately 900 feet east of the intersection of Pete Miller Road and Berry Road; approximately 1800 feet northeast of the intersection of State Highway 146 and Farm-to-Market Road 834 in Liberty County, Texas; Renewal of Permit No. 13135-001.

AMBER TERMINAL, INC., 3101 North Sylvania, Fort Worth, Texas, 76111; The plant site is located at the northwest corner of the intersection of 28th Street (State Highway Business 183) and North Sylvania Avenue in the City of Fort Worth, Tarrant County, Texas; Renewal of Permit No. 00570.

TEXAS UTILITIES ELECTRIC COMPANY, Energy Plaza, 1601 Bryan Street, Dallas, Texas, 75201-3411; The plant site is located at 5770 Parkdale Drive, on the east side of White Rock Creek at the confluence of Forney Branch and White Rock Creek, in the City of Dallas, Dallas County, Texas; Renewal of Permit No. 01251.

KMCO, INC., P.O. Box 1421, Port Arthur, Texas, 77640; The plant site is located at 2425 South Gulfway Drive, approximately 5 miles southwest of the Port Arthur City Hall, Jefferson County, Texas; Major amendment to Permit No.03544.

LUMBERTON MUNICIPAL UTILITY DISTRICT, P.O. Box 8065, Lumberton, Texas, 77657-8065; The plant site is located on the northeast bank of Boggy Creek, approximately 4000 feet southwest of the intersection of Farm-to-Market Road 421 and U.S. Highway 69 in Hardin County, Texas; Major amendment to Permit No. 11709-002.

RONALD ALLEN BENNER, P.O. Box 263, Palacios, Texas, 77465; The plant site is located where County Road 316 meets Carancahua Bay approximately 3.4 miles south of the intersection of State Highways 35 and 172 and 2.2 miles east of the intersection of State Highway 172 and County Road 316, near the City of Port Alto, Calhoun County, Texas; New permit, Proposed Permit No. 04001.

CYPRESS-KLEIN UTILITY DISTRICT, C/O COATS, ROSE, YALE, HOLM, RYMAN & LEE, P.C., 1001 Fannin, Suite 800, Houston, Texas, 77002-6707; The plant site is located on Crosswood Boulevard approximately 1,500 feet north of Cypress Creek and 3,500 feet north of the intersection of Stuebner-Airline Road and Strack Road in Harris County, Texas; Renewal of Permit No. 11366-001.

KOPPERL INDEPENDENT SCHOOL DISTRICT, P.O. Box 67, Kopperl, Texas, 76652; The plant site is located at 101 Fifth Street approximately 1800 feet east-northeast of the intersection of Farm-to-Market Road 56 and the Burlington Northern/Santa Fe Railroad in the Town of Kopperl, Bosque County, Texas; New permit, Proposed Permit No. 13982-001.

CITY OF BROADDUS, P.O. Box 149, Broaddus, Texas, 75929; The plant site is located approximately 300 feet west of State Highway 147, adjacent to Caney Creek in San Augustine County, Texas; Renewal of Permit No. 11772-001.

TEJAS GIRL SCOUT COUNCIL, Inc., P.O. Box 720907, Dallas, Texas, 75372; The wastewater treatment facilities and disposal site

are located approximately 13.2 miles North 36 degrees West from the City of Palestine and on the westerly side of State Highway 19 in Anderson County, Texas; Renewal of Permit No. 11509-001.

CITY OF KENNARD, P.O. Box 115, Kennard, Texas, 75847; The plant site is located on the southeast side of the City of Kennard on a 27 acre tract; on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas; Renewal of Permit No. 11474-001.

LUTHER'S BAR-B-Q, INC., 2611 FM 1960 West, Suite B-101, Houston, Texas, 77068; The plant site is located at 703 Farm-to-Market Road 1960 West, south of the intersection of Farm-to-Market Road 1960 and Hafer Road, approximately 0.6 mile west of Interstate 45 in Harris County, Texas; Renewal of Permit No. 13963-001.

CAMCO INTERNATIONAL INC., 16140 Waverly Road, Houston, Texas, 77032; The plant site is located on the east side of Waverly Road approximately one-half mile north of the intersection of Grens Road and Waverly Road in the city of Houston, Harris County, Texas; Renewal of Permit No. 03472.

POPE, MARVIN AND JANOICE COBB, Rt. 2, Box 2924, Alba, Texas, 75410; The plant site is located approximately 1,000 feet east of Farm-to-Market Road 17, 4.5 miles north of the intersection of State Highway 182 and Farm-to-Market 17 (City of Alba), between Mustang Bay and Little Mustang Bay of Lake Fork Reservoir in Wood County, Texas; Renewal of Permit No. 13366-001.

PAUL H. KREBS, 11700 Padok Road, Houston, Texas, 77044; The plant site is located at No. 3806 on Farm-to-Market Road 1942 in Harris County, Texas; Renewal of Permit No. 12691-001.

D. L. UTILITIES, Inc., 600 Del Lago Boulevard, Montgomery, Texas, 77356; The plant site is located approximately 3.5 miles east of the intersection of Farm-to-Market Roads 149 and 1097 in Montgomery County, Texas; Renewal of Permit No. 12493-001.

WALNUT COVE WATER SUPPLY CORPORATION, P.O. Box 187, Willis, Texas, 77378; The plant site is located 200 feet east of Lake Conroe on Weir Creek, approximately 2 miles west of Interstate Highway 45 and 1.5 miles north of Farm-to-Market Road 1097 in Montgomery County, Texas; Renewal of Permit No. 12416-001.

ISK MAGNETICS, Inc., P.O. Box 96060, Houston, Texas, 77213-6060; The plant site is located at 2239 Haden Road, east of Haden Road, south of Interstate 10, and north of Greens Bayou, within the extraterritorial jurisdiction of the City of Houston, Harris County, Texas; Renewal of Permit No. 03834.

CITGO REFINING AND CHEMICALS COMPANY L.P., P.O. Box 9176, Corpus Christi, Texas, 78469-0321; The plant site is located at 1801 Nueces Bay Boulevard in the City of Corpus Christi, Nueces County, Texas; Renewal of Permit No. 00467.

UPPER TRINITY REGIONAL WATER DISTRICT, 396 West Main Street, Suite 102, Lewisville, Texas, 75057; The plant site is located on Lakeview Airport Road, adjacent to the west side of the Lewisville Lake, approximately 1.5 miles east of Interstate Highway 35 in Denton County, Texas; Renewal of Permit No. 10698-001.

CITY OF HOUSTON, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas, 77207-2549; The plant site is located approximately 250 feet south of River Ridge Drive and 3/4 mile west of U.S. Highway 59 in Montgomery County, Texas; Renewal of Permit No. 10495-142.

DOYLE PACK, Route 1, Box 102, Stephenville, Texas, 76401; This facility is located on the north side of Farm-to-Market Road 8,

approximately one mile east of the intersection of Farm-to-Market Road 8 and Farm-to-Market Road 219 in Erath County, Texas.

NOVICE CATTLE COMPANY, INC., DON BROOKS AND FRANK BARRETT, Route 4 Box 101, Hereford, Texas, 79045; This facility is located on the west side of U.S. Highway 385, approximately 17 miles north of Hereford, Texas in Deaf Smith County, Texas; New permit (Proposed Permit No. 04016).

MCLEOD FARMS, INC., Box 106, Morse Texas, 79062; The cattle feedlot operation is located on the east side of County Road 7 approximately 2.5 miles northeast of the intersection of Farm-to-Market Road 1598 and Farm-to-Market Road 1923 in Hutchinson County, Texas; Renewal of Permit No. 03245.

CODY RAY ELLIOT AND SHARON SUE JONES, 10600 East F.M. 1912, Amarillo, Texas, 79107; This facility is located on the south side of Farm-to-Market Road 1912 approximately one mile east of the intersection of Farm-to-Market Road 1912 and State Highway 136 in Potter County, Texas; Renewal of Permit No. 03509.

DUMAS CATTLE FEEDERS, INC., HC 1 Box 96A, Dumas, Texas, 79029-9715; This facility is located on the west side of U.S. Highway 287, at the intersection of U.S. Highway 287 and Farm-to-Market Road 119 in Moore County, Texas; Renewal of Permit No. 01532.

TRD-9814700

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Attached are notices of applications for waste disposal/discharge permits issued during the period of August 31, 1998 to September 5, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerk's Office-MC105, P.O. Box 13087, Austin, Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

POLK COUNTY FRESH WATER SUPPLY DISTRICT NO. 2, P.O. Box 333, Onalaska, Texas, 77360; The wastewater treatment facility and disposal site are located approximately 3 miles north of Onalaska from the intersection of Farm-to-Market Road 3459 and

U.S. Highway 190 in Polk County, Texas; New Permit No. 11298-002.

CITY OF JASPER, P.O. Box 610, Jasper, Texas, 75951-0610; The plant site is located approximately .8 mile east of the intersection of Farm-to-Market Roads 2799 and 777, and approximately 1 mile northeast of the intersection of U.S. Highway 190 and State Highway 63 in Jasper County, Texas; Major Amendment to Permit No. 10197-001.

NEW BRAUNFELS UTILITIES, P.O. Box 310289, New Braunfels, Texas, 78131-0289; The plant site is located approximately 2000 feet south and 3700 feet east of the intersection of Farm-to-Market Road 725 and Interstate Highway 35 in Comal County, Texas; Renewal of Permit No. 10232-001.

CITY OF GILMER, P.O. Box 760, Gilmer, Texas, 75644; The plant site is located on the northern bank of Sugar Creek, approximately 1.4 miles east of U.S. Highway 271 in Upshur County, Texas; Renewal of Permit No. 10457-001.

CITY OF AMHERST, P.O. Box 560, Amherst, Texas 79312; The wastewater treatment facilities and disposal site are located northeast of Amherst, approximately 0.5 mile east and 0.75 mile north of the intersection of Farm-to-Market Road 37 and First Street in Lamb County, Texas; Renewal of Permit No. 10118-001.

HARRIS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 109, c/o Schwartz, Page and Harding, L.L.P., 1300 Post Oak Boulevard, Suite 1400, Houston, Texas, 77056; The plant site is located at 13415 Bammel-North Houston Road in the City of Houston, 0.57 mile southwest of the intersection of Veterans Blvd. (Stuebner-Airline Road) and Bammel-North Houston Road in Harris County, Texas; Renewal of Permit No. 11026-002.

TRD-9814979

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 22, 1998



Notice of Application to Obtain a Texas Weather Modification License and Declaration of Administrative Completeness

The following applicants seek to obtain a Texas weather-modification license for Fiscal Year 1999, under Texas Water Code Chapter 18 (Texas Weather Modification Act of 1967) and the Rules of the Texas Natural Resource Conservation Commission (TNRCC), 30 TAC Chapter 289.

Application No. E833846 submitted by WEATHER MODIFICATION, INC., 3802 20th Street North, Fargo, North Dakota 58102. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 13, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application include Patrick H. Sweeney, Dr. Terrence W. Krauss, Fred M. Remer, Dr. Cedric A. Grainger, Dr. William L. Woodley, Daryl O'Dowd, Dr. James Heimbach, Mark Schneider, and Aaron Gilstad.

Application No. #833897 submitted by TEXAS BORDER WEATHER MODIFICATION ASSOCIATION, 232 W. Srickland, Del Rio, Texas 78840. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 14, 1998. A summary of the information

contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. Aldis Strutins.

Application No. E833458 submitted by NORTH AMERICAN WEATHER CONSULTANTS, 8184 South Highland Drive, Suite C 5, Sandy, Utah 84093. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 8, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mark Thompson, Mark Solak, Don Griffith, William Hauze, Einar Hovind, Jack Vowell and Dan Risch.

Application No. 832847 submitted by DOMAINE CORDIER, USA, P. O. Box 146, Fort Stockton, Texas 79735. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 1, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. Larry Wallace.

Application No. E832996 submitted by HIGH PLAINS UNDERGROUND WATER CONSERVATION DISTRICT NO. 1, 2930 Avenue Q, Lubbock, Texas 79405. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 1, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. A. Wayne Wyatt, Manager of the District, and Dr. William L. Woodley.

Application No. E834089 submitted by WEST TEXAS WEATHER MODIFICATION ASSOCIATION, 8696 Hangar Road, San Angelo, Texas 76904. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 16, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. Aldis Strautins.

Application No. E832758 submitted by COLORADO RIVER MUNICIPAL WATER DISTRICT, P. O. Box 869, Big Spring, Texas 79721. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 13, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. Ray Pat Jones, Project Meteorologist for the district, and John Grant, General Manager of the District.

Application No. 832995 submitted by ATMOSPHERICS INCORPORATED, 5652 E. Dayton Avenue, Fresno, California 93727. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on July 1, 1998. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. Thomas J. Henderson and Dr. William L. Woodley.

Application No. E835561 submitted by POWELL PLANT FARMS, INC., Route 3, Box 1058, Troup, Texas 75789. The applicant is requesting a renewal to their current 1998 Texas Weather-modification license. The application was received on August 1, 1998, and the Commission's Weather Modification Advisory Committee examined this application and recommended that the license be renewed by the Commission. A summary of the information contained in the application includes the names of the meteorologists who are to be in control and in charge of weather-modification operations. The personnel listed on the license application includes Mr. Larry Wallace.

Issuance of a license, or renewal of an existing license, merely certifies that the person(s) or organization holding the license is (are) competent to conduct weather modification activities, and is contingent upon the applicant paying the license fee and demonstrating competence in the field of meteorology which is reasonably necessary to engage in weather modification and control operations. A permit is required before the licensee can actually begin conducting weather modification and control activities.

The Commission's Weather Modification Advisory Committee, at its July 16, 1998 meeting in Austin, examined the first eight license applications and recommended that the licenses be issued by the Commission. The ninth application was reviewed at a later date. A technical review by agency staff has been done, and the staff also recommend that the licenses be issued.

The Executive Director may approve these applications unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC within 10 days of this *Texas Register* posting.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9814978

Eugenia K. Brumm, Ph.D.
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: September 22, 1998



Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on September 1, 1998 on Merlene Mixon dba River Ridge Water Systems; SOAH Docket No. 582-97-1705; TNRCC Docket No. 95-1452-PWS-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9814690

Douglas A. Kitts
Agenda Coordinator

Texas Natural Resource Conservation Commission
Filed: September 16, 1998



Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of August 5, 1998.

Application No. TA-7993 by Champions Hydro-Lawn, Inc. for diversion of 10 acre-feet in a 1 year period for industrial (construction project) use. Water may be diverted from Langham Creek, tributary of Bear Creek, tributary of Buffalo Bayou, tributary of the San Jacinto River, at the stream crossing near the intersection of Hwy. 6 and Little York Rd., approximately 4 miles Northwest of Houston, Harris County, Texas.

Application No. TA-7995 for diversion of 10 acre-feet in a 1 year period for irrigation use. Water may be diverted from Pin Oak Creek, tributary of Richland Creek, tributary of the Trinity River approximately .5 mile South of Hubbard and 20 miles South of Hillsboro, Hill County, Texas.

Application No. TA-7996 by M. Hanna Construction Co., Inc. for diversion of 10 acre-feet in a 1 year period for industrial (earthwork construction) use. Water may be diverted from Lake Tyler off FARM-TO-MARKET ROAD 346, approximately 8 miles Southeast of Tyler and 3 miles East of Whitehouse, Smith County, Texas.

Application No. TA-7997 by Austin Bridge and Road for diversion of 1 acre-foot in a 6 month period for industrial (road maintenance and construction) use. Water may be diverted from the Guadalupe River at the stream crossing of FARM-TO-MARKET ROAD 1340, approximately 12 miles West of Hunt and 23 miles West of Kerrville, Kerr County, Texas, Guadalupe River Basin.

Application No. TA-7998 by Homer L. Boase for diversion of 10 acre-feet in a 1-year period for irrigation use. Water may be diverted from the East Fork Angelina River, Neches River Basin, approximately 20 miles south of Henderson, Rusk County, Texas, near the crossing of FARM-TO-MARKET ROAD 225 and the East Fork Angelina River.

Application No. TA-7999 by Tuttle Construction Inc. for diversion of 9 acre-feet for industrial (road construction) use. Water may be diverted from 1) Balcones Creek, tributary of Cibolo Creek, tributary of the San Antonio River, at the stream crossing of INTERSTATE HIGHWAY-10 approximately 4 miles East of Boerne; 2) Cibolo Creek, Tributary of the San Antonio River, at the intersection of Herff Rd. And Hwy. 46 inside the city limits of Boerne; and 3) Guadalupe River at the stream crossing of Hwy. 1376 approximately 10 miles Northeast of Boerne, Kendall County, Texas.

Application No. TA-8000 by Edmund Jenschke, Inc. for diversion of 10 acre-feet in a 1-year period for industrial (road construction) use. Water may be diverted from the South Fork Guadalupe river at the stream crossing of HWY 39 approximately 2.5 miles Southwest of Hunt and from the Guadalupe River at the stream crossing of HWY 39 in Ingram, Kerr County, Texas, Guadalupe River Basin.

Application No. TA-8002 by D.L. Lennon, Inc. Contractors for diversion of 2 acre-feet in a 1-year period for industrial (road construction) use. Water may be diverted from Brushy Creek, tributary of West Caddo Creek, tributary of Caddo Creek, tributary of Lake Tawakoni, at the stream crossing of FARM-TO-MARKET ROAD 36 approximately 11 miles Southwest of Greenville and 7 miles Northwest of Quinlan, Hunt County, Texas, Sabine River Basin.

Application No. TA-8003 by Jones Bros. Dirt & Paving for diversion of 10 acre-feet in a 6-month period for industrial (road construction) use. Water may be diverted from the Rio Grande River, approximately .5 mile Southwest of Ruidosa, Presidio County, Texas, Rio Grande River Basin.

Application No. TA-8004 by Granite Construction Co. for diversion of 10 acre-feet in a 1 year period for industrial (soil moisture control) use. Water may be diverted from a reservoir on Little Tehuacana

Creek, tributary of Tehuacana Creek, tributary of the Trinity River, 0.25 mile East of CONTACT RECREATION 1051, approximately 1.5 miles North of Kirvin, Freestone County, Texas, Trinity River Basin.

Application No. TA-8005 by Granite Construction Co. for diversion of 10 acre-feet in a 1 year period for industrial (soil moisture control) use. Water may be diverted from a reservoir on Grindstone Creek, tributary of Caney Creek, tributary of Tehuacana Creek, tributary of the Trinity River, 0.25 mile North of C R 1080, approximately 1.5 miles East of Kirvin, Freestone County, Texas, Trinity River Basin.

Application No. TA-8006 by Granite Construction Co. for diversion of 10 acre-feet in a 1 year period for industrial (soil moisture control) use. Water may be diverted from a reservoir on Caney Creek, tributary of Tehuacana Creek, tributary of the Trinity River, 0.25 mile South of CONTACT RECREATION 1080 and 0.5 mile West of I-45, approximately 4 miles Northwest of Fairfield, Freestone County, Texas, Trinity River Basin, Texas.

Application No. TA-8007 by Granite Construction Co. for diversion of 10 acre-feet in a 1 year period for industrial (soil moisture control) use. Water may be diverted from a reservoir on Cottonwood Creek, tributary of Tehuacana Creek, tributary of the Trinity River, 0.25 mile South of CONTACT RECREATION 1080 and 0.25 mile West of US 75, approximately 3 miles Northwest of Fairfield, Freestone County, Texas, Trinity River Basin.

Application No. TA-8008 by Granite Construction Co. for diversion of 10 acre-feet in a 1 year period for industrial (soil moisture control) use. Water may be diverted from a reservoir on Walnut Creek, tributary of Cottonwood Creek, tributary of Tehuacana Creek, tributary of the Trinity River, 0.5 mile East of FARM-TO-MARKET ROAD 2547, approximately 2.5 miles North of Fairfield, Freestone County, Texas, Trinity River Basin.

Application No. TA-8009 by Texas Parks and Wildlife for diversion of 10 acre-feet in a 1 year period for irrigation (irrigate less than 2 acres of spillway) use. Water may be diverted from the Alazan Bayou, tributary of Morral Creek, tributary of the Angelina River, near the stream crossing of the pipeline Right-Of-Way 0.3 mile South of FARM-TO-MARKET ROAD 628, approximately 9.5 miles South of Nacogdoches, Nacogdoches County, Texas, Neches River Basin.

Application No. TA-8010 by Bilma Public Utility District for diversion of 10 acre-feet in a 1 year period for irrigation (irrigation of Esplanades within a sub-division) use. Water may be diverted from an Unnamed tributary of Spring Gulley, tributary of Cypress Creek, tributary of the San Jacinto River at the stream crossing of the T.C. Jester Blvd. Public Right-Of-Way, approximately 25 miles Northwest of Houston and 6 miles Southwest of Spring, Harris County, Texas, San Jacinto River Basin.

Application No. TA-8011 by Natural Gas Pipeline Co. Of America for diversion of 10 acre-feet in a 6 month period for industrial (hydrostatic testing) use. Water may be diverted from the Neches River 3 miles downstream of the stream crossing HWY 59, approximately 4 miles South of Diboll, Angelina County Texas, Neches River Basin.

Application No. TA-8012 by Natural Gas Pipeline Co. Of America for diversion of 10 acre-feet in a 6 month period for industrial (hydrostatic testing) use. Water may be diverted from Caney Creek, tributary of the San Jacinto River, at the stream crossing of FARM-TO-MARKET ROAD 1485 (Natural's Compressor Station Site), approximately 26 miles Southeast of Conroe, Montgomery County, Texas, San Jacinto River Basin.

Application No. TA-8013 by Natural Gas Pipeline Co. Of America for diversion of 10 acre-feet in a 6 month period for industrial (hydrostatic testing) use. Water may be diverted from the East Fork San Jacinto, tributary of the San Jacinto River, at the stream crossing of HWY 59, approximately 4 miles South of Cleveland, Liberty County, Texas, San Jacinto River Basin.

Application No. TA-8014 by Shuler Drilling Co., Inc. for diversion of 2 acre-feet in a 6 month period for industrial (drilling a gas well) use. Water may be diverted from McFadden Creek tributary of the Sabine River, at the stream crossing of FARM-TO-MARKET ROAD 699 approximately 15 miles Southeast of Carthage and 1.5 miles Southeast of Old Center, Panola County, Texas, Sabine River Basin.

Application No. TA-8015 by Hayes County for diversion of 10 acre-feet in a 1 year period for industrial (road repair and maintenance) use. Water may be diverted from the Blanco River within Hays County, Texas, Guadalupe River Basin, shown on a map submitted with the application.

Application No. TA-8016 by Natural Gas Pipeline Co. Of America for diversion of 10 acre-feet in a 6 month period for industrial (hydrostatic testing) use. Water may be diverted from Piney Creek, tributary of the Neches River, at the Public Right-Of-Way on FARM-TO-MARKET ROAD 1987, approximately 4 miles Northeast of Corrigan, Polk County, Texas, Neches River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9814689

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 16, 1998



Public Notice of Settlement Agreement

AGENCIES: Texas Natural Resource Conservation Commission, the Texas Parks and Wildlife Department, and the Texas General Land Office; hereafter collectively referred to as the "Natural Resource Trustees."

ACTION: Notice of Availability of a proposed Settlement Agreement and Restoration Plan and a 30-day period for public comment.

SUMMARY: Notice is hereby given of the following proposed resolution of the claim for natural resource damages under the Oil Pollution Act of 1990 and the Texas Oil Spill Prevention and Response Act.

The Natural Resource Trustees have reached a proposed agreement with Citgo Pipeline Company (Citgo) to resolve Citgo's liability for injuries to natural resources and ecological services they provide caused by a discharge of crude oil into the waters of the State of Texas.

On June 26, 1996, a 20-inch crude pipeline belonging to Citgo ruptured, losing in excess of 300 barrels of light sour crude oil, approximately 5 miles WNW of the City of Vidor, Orange County, Texas. The discharge occurred where the pipeline crosses over the City of Beaumont's fresh water canal, Bunns Canal, which is located 3/4 of a mile east of the Neches River. The discharge was generally contained approximately 1500 feet downstream, in the western narrow channel of Lake Bayou. The discharge affected a cypress tupelo wetland and logging channel, located east of the Neches River and the Big Thicket National Preserve, and impaired the ecological services provided by the wetland. Trustees documented injuries to natural resources, including fish mortality, vertebrate and invertebrate mortality, oiled surface waters and riparian vegetation, and a water column injury. In addition, the cleanup operations required the closure of a camping area and boat ramp. Because the quantity and concentration of the released oil resulted in injury to trust resources, the Natural Resource Trustees are seeking compensation for natural resource damages.

The proposed Settlement Agreement and Restoration Plan require Citgo to acquire the equivalent of the injured natural resources. Citgo's acquisition of a 26.2 acre tract of land, known as the Pine Island Bayou Property, and transfer of the property to the Big Thicket National Preserve (Preserve) will adequately compensate for natural resource damages. A term of the transfer is that the Preserve accept the property and maintain it in perpetuity. It has been determined by the Natural Resource Trustees that perpetuity and land use issues are addressed under the Preserve's regulations, land use classifications, and statutory protection.

Citgo is required to pay all costs associated with the acquisition and transfer of the Pine Island Bayou property. Citgo is also required to pay all past natural resource damage assessment costs and future Natural Resource Trustee oversight costs. Terms of the transfer to the public entity are described in the Settlement Agreement.

The opportunity for public review of the proposed Settlement Agreement and attached Restoration Plan is required under applicable state and federal law. Interested members of the public may obtain a copy of the proposed Settlement Agreement and Restoration Plan by contacting Charles Brigance, Texas Natural Resource Conservation Commission, P.O. Box 13087 (MC-142), Austin, Texas 78711-3087, (512) 239-2238. All written comments will be considered by the Natural Resource Trustees prior to finalizing any settlement agreement or restoration plan. Comments must be received by 5:00 p.m. on November 1, 1998.

TRD-9815002

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: September 23, 1998

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Texas State Board of Pharmacy

Cancellation of Meeting of Task Force on Pharmacists' Working Conditions and Their Impact on the Public Health

The Texas State Board of Pharmacy announces that the Wednesday, October 7, 1998, meeting for the Task Force on Pharmacists' Working Conditions and Their Impact on the Public Health has been canceled and is subject to rescheduling at a later date.

TRD-9814729

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: September 16, 1998

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Notification of Meeting of Task Force on Pharmacists' Working Conditions and Their Impact on the Public Health

The Texas State Board of Pharmacy announces that the Task Force on Pharmacists' Working Conditions and Their Impact on the Public Health will meet Wednesday, November 4, 1998. The meeting will be held in Tower 2, Room 2-225, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas at 9:30 a.m. Any questions regarding this meeting should be directed to Allison Benz, R.Ph., Enforcement Officer, at 512/305-8037.

TRD-9814728

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: September 16, 1998

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Temporary Restraining Order

On September 15, 1998, the Honorable Pete Lowry, Judge for the 98th District court of Travis County, Texas ordered that the Board, as well as Gay Dodson in her capacity as Executive Director of the Board, be and hereby commanded forthwith to desist and refrain from:

(1) enforcing or attempting to enforce the Board's proposed rule amending its current rule §309.3, (which would create new requirements for certain drugs designated as NTI drugs) from the date of the entry of this Order and to the 14th day after entry or until further order of this Court;

(2) notifying pharmacists in the State of Texas of the purported adoption of the proposed rule from the date of entry of this Order until and to the 14th day after entry or until further order of this Court; and

(3) allowing the proposed rule to become effective from the date of entry of this Order until and to the 14th day after entry or until further order of this Court.

TRD-9814731

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas Board of Pharmacy

Filed: September 16, 1998

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Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 15, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Notification of Southwestern Bell Telephone Company (SWBT) to Revise the Access Service Tariff to Remove all References to 10XXX Access Codes, Pursuant to Substantive Rule §23.25. Tariff Control Number 19856.

The Application: SWBT is proposing to revise its access service tariff to include the full conversion from three-digit Feature Group D Carrier Identification Codes (CICs) to four-digit codes in the access service tariff. These changes are in conjunction with the Federal Communication's Order in the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), CC Docket Number 92-237, released April 11, 1997 and FCC 97-386, released October 22, 1997, Paragraph 20, and removes all references to 10XXX access codes in the tariff.

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 7, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814780
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 17, 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 New Business Local Plus Customers Pursuant to Substantive Rule §23.25. Tariff Control Number 19868.

The Application: SWBT is instituting promotional rates for new Local Plus business customers in Texas who subscribe to Local Plus service between October 9, 1998 and January 4, 1999. During the promotional period, business customers who subscribe to two or more EACS plans marketed as "Local Plus" and commit to keep the plans for 12 months will receive a one-time credit equivalent to three months' EACS payments on each of the new EACS plans. This plan is only available to new or existing business customers who do not currently subscribe to Local Plus.

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 8, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814955
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: September 22, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 18, 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 MaxiMizer™ 800 5-Hour Block Plan Pursuant to Substantive Rule §23.25. Tariff Control Number 19873.

The Application: SWBT is instituting promotional rates for business customers newly subscribing to a twelve month subscription to the MaxiMizer™ 800 5-Hour Block Plan between October 10, 1998 and January 7, 1999. During the promotional period, new twelve-month subscribers of the 5-Hour Block Plan will receive a one-time credit of \$60, which is equal to the 12 months of the recurring \$5.00 charges for subscription to the MaxiMizer™ 800 5-Hour Block Plan.

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 8, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814982
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 18, 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 Revise the Cellular Mobile Telephone Interconnection Tariff and to Introduce the Wireless sage Study Service Pursuant to Substantive Rule §23.25. Tariff Control Number 19874.

The Application: SWBT is revising its' Cellular Mobile Telephone Interconnection Tariff to include the introduction of a new Wireless Usage Study service and the removal of an obsolete footnote associated with originating circuits. The final change is a policy revision that will allow wireless carriers to terminate their facilities at the premises of another telecommunications carrier, which eliminates the previous restriction.

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 14, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814983
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: September 22, 1998



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

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 to provide Asynchronous Transfer Mode/User-to-Network Interface (ATM/UNI) Service to the Renaissance Charter School located in Irving, Texas.

Tariff Title and Number: GTE-Southwest, Inc.'s (GTE-SW) Notice of Intent to File a Customer-Specific Contract to Provide ATM/UNI Service to the Renaissance Charter School located in Irving, Texas, Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19876.

The Application: GTE-SW intends to file an application on or around September 28, 1998 to provide ATM/UNI Service to Renaissance located in Irving, Texas. The ATM/UNI service which GTE-SW proposes to offer Renaissance is a high-speed private line service which offers a customer the unique ability to combine multiple service types-voice, video and data onto a single physical access circuit. UNI is used as an interface between the ATM customer's premise equipment and the GTE-SW ATM network switch. GTE-SW proposes to offer this service in the Irving, Texas exchange.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814984

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 1998



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Tarrant County in Fort Worth, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Addition to the Existing PLEXAR-Custom Service for Tarrant County in Fort Worth, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19867.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Tarrant County in Fort Worth, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Fort Worth exchange, and the geographic market for this specific PLEXAR-Custom service is the Dallas LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9814954

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 1998



Notice of Public Hearing Relating to Truth in Telecommunications Billing; Avoidance of Unauthorized Billing Charges

The Public Utility Commission of Texas will conduct a public hearing in rulemaking Project Number 19516, *Truth in Telecommunications Billing; Avoidance of Unauthorized Billing Charges ("Cramming")* pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at 9:30 a.m. on Wednesday, October 28, 1998. This public hearing will be conducted in the commissioners' hearing room located on the seventh floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701.

The public hearing will focus on proposed new rule §26.45 concerning cramming as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8784).

If you have any questions in regards to this proceeding, contact Jo Alene Kirkel, Office of Customer Protection, at (512) 936-7144.

TRD-9814956

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 1998



Public Notice of Amendment to Interconnection Agreement

On September 14, 1998, Southwestern Bell Telephone Company and Time Warner Telecom of Texas, L.P., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19851. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19851. 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 15, 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 19851.

TRD-9814950
 Rhonda Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: September 22, 1998



Public Notices of Interconnection Agreement

On September 14, 1998, Southwestern Bell Telephone Company and Communications Pearl, L.L.C., 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 19852. 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 19852. 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 21, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19852.

TRD-9814951
 Rhonda Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: September 22, 1998



On September 15, 1998, Southwestern Bell Telephone Company and Northpoint Communication, 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 19858. 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. Pur-

suant 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 19858. 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 21, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19858.

TRD-9814952
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 1998



On September 16, 1998, American Telco, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application

for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19860. 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 19860. 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 15, 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 19860.

TRD-9814953
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 1998



Railroad Commission of Texas

Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (Commission), is soliciting bids for the closure of 26 mine openings at the Lone Star-Mariposa (Phase 2) Abandoned Mine Land (AML) Project site. The site is located 4.3 miles west of Terlingua, Texas, in Brewster County.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A. Section 1201 *et seq.*), the Commission will award a unit price, fixed price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2:00 p.m., November 18, 1998, at which time the bids will be publicly opened and read at the address given below. A mandatory pre-bid conference will be held at the site at 9:00 a.m., October 21, 1998, 1998. Construction work item will include:

- (1) Mobilization
- (2) Two Bat Gate Closures
- (3) Ten Steel Grated Shaft Closures
- (4) Two Corrugated Steel Pipe Installation
- (5) Three Cable Net Closures
- (6) Six Mortared Rock Wall Closures
- (7) Three Backfill Closures

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the following mailing address. Lone Star-Mariposa (Phase 2) AML Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; P.O. Box 12967; 1701 N. Congress Avenue (11-150E); Austin, Texas 78711-2967; Attn: Mark J. Rhodes, Assistant Director All questions concerning the work or bid document must be received by 5:00 p.m., November 4, 1998. For additional information call Mark Rhodes at (512) 305-8834.

TRD-9815014

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Filed: September 23, 1998



Records Management Interagency Coordinating Council

Report Due on State Electronic Records

A draft of the Electronic Records Research Report is available for comment. This notice contains the report's introduction and its table of contents. To obtain the complete text of the report write to Department of Information Resources, P.O. Box 13564, Austin, TX 78711-3564. The report also is available at this web site: <http://www.tyc.state.tx.us/errc>.

Please send comments and questions about the report to the mailing address above or email: martha.richardson@dir.state.tx.us. Deadline for comments is October 9, 1998.

Introduction to the Report.

Senate Bill 897 of the 75th Legislature requires the Records Management Interagency Coordinating Council (RMICC) to form a research group to study the challenges introduced by digital formats to the

management of state records and to public access to state government information. The charge is to study:

- The functional requirements for keeping and archiving records in an electronic format
- Possible cost-effective guidelines for using records in an electronic format
- A possible policy for state government's archiving of records in an electronic format
- Possible standards and policies for formatting information in an electronic format
- Feasible ways to develop a searchable database that contains state agency documents in an electronic format.

In September, 1997, RMICC established the Electronic Records Research Committee (ERRC) to conduct research into the five charges given above. Co-chairs were named from the Department of Information Resources and the Texas State Library and Archives Commission. Four focus groups were formed to look at the issues. The focus groups, chaired by ERRC members, held semi-monthly meetings, reporting findings to the main committee at monthly meetings. An electronic list and a web site were established to foster communication among the members.

After researching and discussing the issues, the ERRC decided to present its findings and make its recommendations in three broad categories that encompass the five charges presented by the Legislature. Recommendations are presented for managing records in digital formats, adopting functional requirements for managing records in digital formats, and making agency information available to the public in digital formats. Each area involves standards and policies and cost-effective guidelines.

In the early 1940's the proliferation of paper created a need for more and more file cabinets. Records management policies came into being to contain the unnecessary expense of keeping everything indefinitely and to protect the longevity of information having enduring value for legal, historical, or research purposes. We are in the same situation now with electronic records. More and larger electronic storage units are purchased to handle data that may or may not have continuing value for government business. Lack of appropriate classification schemes for electronic data allows valuable records to be lost and useless records to be kept. Typical IT management practices regain storage space by deleting files that have not been accessed for some specified time period, without regard to the value or necessity of the information contained within the file. Retention periods should be set for state records in all records media, including electronic formats, based on government business function.

The ERRC's recommendations allow better coordination among records management and information systems staff within agencies to ensure that appropriate measures are taken to manage and provide access to information in electronic formats.

Table of Contents.

Members of the Electronic Records Research Committee

Fiscal Impact Summary.

I. Managing Electronic Records in Compliance with Standards and Legal Requirements.

II. Establishing Functional Requirements For Keeping And Archiving Records In An Electronic Format.

III. Making State Agency Documents In Digital Formats Readily Available To And Easily Located By The Public.

IV. Continuing the study requested by Section 4 of Acts 1997, 75th Legislature, Chapter 1186.

Glossary.

Bibliography.

Appendices:

Functional Requirements for Managing Electronic Records (Draft).

Factors in Determining Cost Effectiveness of Electronic Records (Draft).

TRD-9815187

Dan Procter

Liaison

Records Management Interagency Coordinating Council

Filed: September 28, 1998



Research and Oversight Council on Workers' Compensation

Request for Proposals

The Research and Oversight Council on Workers' Compensation invites proposals from qualified and experienced firms and institutions for the purpose of administering a survey which provides data on the quality and access of medical care received by injured workers. This notice constitutes the entire Request for Proposal and contains all requirements necessary for an appropriate response.

Description of Services. Under this request the Research and Oversight Council plans to procure the services of a qualified firm or institution to perform the following duties: 1) the administration and completion of 1,200 telephone surveys of injured workers; 2) the completion of those surveys using five "call-backs" when necessary; 3) the drafting of a brief (maximum of five pages) report which describes the general methodology used and any major problems encountered in the administration of the survey, along with any caveats or other observations about the use of the data gathered from the survey.

Descriptions of Provisions. The Research and Oversight Council will provide a random sample of injured workers drawn from the population of injured workers who had the same medical diagnoses and were injured during 1995 or 1996. It should be noted that past experience has shown that 15 to 20 percent of injured workers' telephone numbers listed within the sample are invalid numbers and/or missing. Thus, a methodology for locating such injured workers when needed should be included in the proposal.

The Research and Oversight Council will also provide a pre-tested survey instrument consisting of approximately 40-45 questions which will be used in the administration of the survey described in this proposal. No single respondent to this survey, however, will have to answer all 40-45 of those questions.

Specification for Deliverables. The Research and Oversight Council will have review and approval authority over all deliverables. All information generated will become the property of the Research and Oversight Council. To protect the state's interest, all deliverables as well as data bases, become the property of the Research and Oversight Council. The proposal submitted must demonstrate that the applicant is capable of performing, and willing to provide, all deliverables.

Project deliverables, at a minimum, will include:

- a) Data generated from the completed surveys delivered on computer disk;
- b) Response frequencies on all questionnaire items;
- c) A brief (maximum of five pages) technical report detailing the methodology used and any major problems encountered in the administration of the survey. This might include any caveats or other relevant observations about the reliability of the data gathered from the survey.

All project deliverables are due on or before the end of the contract period.

Proposal Requirements. Respondents must submit a typewritten proposal on 8 1/2 by 11 inch plain white paper. All proposals and their accompanying attachments become the property of the Research and Oversight Council upon submission. Materials submitted will not be returned. Only attachments essential to the proposal should be submitted. To be considered, the following items must be included in the proposal:

- a) an identification page listing the full legal name, the mailing and street address if different, title, and telephone number for the representative authorized to sign the contract and the same for the contact person;
- b) a summary (maximum of seven pages) describing how the contractor proposes to provide the services described and requested in the previous sections of this proposal request entitled "Description of Services" and "Specification of Deliverables," including who will be responsible for carrying out each part of the project, the proposed approach (describing the methodology, activities and/or procedures to be used in administering the survey, including a brief description of any survey administration software used, automatic dialing capacity, number of interviewing stations, number of interviewers, survey lab hours, bilingual capacity, and interviewer training guidelines, if any), and the general timelines within which the proposed project will be accomplished;
- c) a detailed budget of all costs;
- d) a description of the services, if any, that the contractor may require from the Research and Oversight Council and other state agencies;
- e) the names of key staff to be used in this contract, their function and a complete resume; and
- f) references, including client contact information from similar contracts and copies of similar work products, if available, that demonstrate experience and knowledge with project management and data collection.

Closing Date. The written proposal must be received by the Research and Oversight Council by 2:00 p.m. on October 16, 1998. Send proposals to Scott McAnally, Executive Director, Research and Oversight Council on Workers' Compensation, 105 West Riverside Drive, Suite 100, Austin, Texas 78704. Proposals can be sent via facsimile to 512/469-7481. Hand-delivered proposals will be accepted daily between 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays, and holidays at the same address. Proposals received after the deadline will not be eligible for consideration. Proposers may be requested to make oral presentations of their proposals at their own expense.

Terms and Amount. The following terms and conditions must be accepted by all respondents. The Research and Oversight Council reserves the right to reject any and all proposals, or portions of

proposals, and to cancel this Request for Proposal if it is deemed in the best interest of the Research and Oversight Council. All information generated is the exclusive property of the Research and Oversight Council. At the conclusion of the project, an itemized expenditure report is due.

The Research and Oversight Council reserves the right to negotiate with one or more respondents. The Research and Oversight Council reserves the right to reasonably modify and reschedule proposed activities throughout the life of the contract.

Issuance of this Request for Proposal creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

It is anticipated that the contract period will be from November 2, 1998 through November 23, 1998. The amount of the award will be commensurate with services provided.

Evaluation and Selection. The proposal demonstrating the highest quality of proposed services deliverable within the established time frame offering the greatest expertise and qualifications at the most cost-effective price, will be awarded the contract.

Contact Point. Any questions regarding this Request for Proposals should be directed to Amy Lee, Research Specialist, at 512/469-7811.

TRD-9815003

Scott McAnally

Executive Director

Research and Oversight Council on Workers' Compensation

Filed: September 23, 1998



Texas Department of Transportation

Public Notice

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: statewide air service study.

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 who have special communication or accommodation needs and 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, 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-9814999

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Filed: September 23, 1998



Request for Proposal

In accordance with Transportation Code, Chapter 455, the Texas Department of Transportation (TxDOT) is requesting proposals to develop and support intercity bus service within Texas. Specifically, funding for intercity bus service is to strengthen the connection between nonurbanized areas and the larger regional or national system of intercity bus service; to support services to meet the intercity travel needs of residents in nonurbanized areas; and to support the infrastructure of the intercity bus network through planning and marketing assistance and capital investment in facilities.

For purposes of this RFP, the term "firm" is defined to include members of the intercity bus industry and local public bodies and agencies. The applicant must have the authority to enter into an agreement with TxDOT. Projects will be funded with grants of Federal Transit Administration funds (Section 5311f) which can provide up to 80% of the cost of capital projects. The remaining balance must be from local funds. No state appropriated funds will be available as match for the federal funds. Funds will be distributed on a reimbursement basis and must be obligated within one year from the date of award. All work must be completed within a specified time period from the date the contract is executed. The contract period is one year for mobility aid projects, marketing activities, and service planning, and two years for facility projects.

Description of Service. TxDOT has identified eligible projects in consultation with members of the public transportation industry and the intercity bus industry for the construction, rehabilitation, maintenance, or acquisition of public transit facilities; the incremental costs of modification of over the road coaches to board, secure, and transport the disabled; marketing activities aimed at increasing public awareness and ridership of intercity bus transportation; and service planning for the purpose of evaluating existing and future service.

Proposals for public transit facilities must include open and equal access for all intercity bus carriers serving the community and at least one of the following: passenger rail, urbanized public transit, rural public transit, or common carrier air passenger service. The community must currently have the type of passenger service proposed. TxDOT can provide up to 80% of the cost of construction, rehabilitation, maintenance, or purchase of public transit facilities. The appraised value of the land may be applied toward the local match. Section 5311f funding for capital projects in urbanized areas (population greater than 50,000) is limited to those aspects of the project which can be identified as directly benefiting and supporting service to and from nonurbanized areas (population less than 50,000).

Proposals for over the road coaches are limited to the incremental costs of the mobility aid assistance modifications necessary to transport the mobility impaired. Eligible activities may include but are not limited to mobility aid lifts, securement devices, and onboard restroom accommodations. TxDOT can pay up to 80% of the costs of the mobility aid modifications on currently owned or leased over the road coaches, or will pay up to 100% of the costs of the mobility aid modifications of new over the road coach purchases (not to exceed 20% of the total cost of the vehicle including modifications).

Proposals for marketing activities may include but are not limited to television, radio, and print media advertising; billboards and signs; market research; route maps and schedules; information kiosks; and promotions and special events. TxDOT can provide up to 80% of

the cost of marketing activities for the purpose of increasing public awareness and ridership of intercity bus transportation.

Proposals for service planning may include but are not limited to route feasibility and route realignment studies. TxDOT can provide up to 80% of the cost of service planning aimed at increasing efficiency and intercity bus ridership.

Budget. Funds to enhance intercity bus service in Texas are to be drawn from "set aside" dollars from the Federal nonurbanized public transportation.

Evaluation Criteria. Public Transit Facilities: Preference will be given to projects located in areas with population less than 200,000 and an increased number of transportation mode choices (transit, air, rail, etc.). Funds are available for construction to include rehabilitation of terminals. Rehabilitation may include modifications required to make terminals accessible to the disabled, roof renovation, and heating and air conditioning modernization. No funds for current or future terminal operations will be available.

Projects must comply with all local, state, and federal laws and rules, including environmental clearances. The finished facility must be owned by the firm, including private bus companies providing scheduled service, submitting the proposal. Land must be clear of liens and owned by the firm prior to the beginning of any construction activity.

Proposals for public transit facilities will be evaluated on the following merits:

1. Cost of improvement - Number of passengers served annually divided by the cost of the project (25 points).
2. Terminal(s) located in area(s) with population less than 200,000 (20 points).
3. Number of different transportation modes using the terminal (25 points).
4. Number of passenger amenities in completed terminal project (15 points).
5. Percent of local share (15 points).

Mobility Aid Modifications. Preference will be given to proposals which increase the number of disabled passengers served. Modifications should be such that passengers requiring the use of mobility aids can safely enter and be secured. Modifications to existing vehicles should be done as part of a total rehabilitation to extend the life of the vehicle.

Proposals for mobility aid modifications will be evaluated on the following merits:

1. Projected increase in number of disabled passengers - Disabled passengers served annually divided by number of passengers served annually (25 points).
2. Work with other public transit and intercity providers (10 points).
3. Percentage of fleet to be converted (10 points).
4. Project goals and objectives clearly defined (20 points).
5. Improvement of customer service (20 points).
6. Percent of local share (15 points).

Marketing Activities. Preference will be given to projects which target and clearly define a specific market segment and projects which improve intercity customer service.

Proposals for marketing activities will be evaluated on the following merits:

1. Scope of project clearly defined (20 points).
2. Work with other public transit and intercity providers (10 points).
3. Cost of reaching target audience. Target audience population divided by project cost (15 Points).
4. Improvement of customer service (20 points).
5. Project implementation timetable (20 points).
6. Percent of local share (15 points).

Service Planning. Preference will be given to projects with a higher return on investment and clearly defined goals and objectives.

Proposals for service planning will be evaluated on the following merits:

1. Project goals and objectives clearly defined (20 points).
2. Work with other public transit and intercity providers (10 points).
3. Projected return on investment. - Increase in revenue divided by project cost (35 Points).
4. Project implementation timetable (20 points).
5. Percent of local share (15 points).

TxDOT reserves the right to contact a firm to obtain written clarification of information submitted or any other matter deemed appropriate for the evaluations. No negotiations, decisions, or actions shall be executed by the bidder, or firm, as a result of any discussions with any state employee. TxDOT will contact the designated project manager in the event clarification is required during the proposal evaluation process. TxDOT will consider from firms only the addendums which are in writing and signed by an authorized officer of the firm.

In evaluating proposals, TxDOT has the right to accept or reject all or any proposal, and award the proposal to best serve the intercity bus industry in Texas, and use any or all information contained in the proposal, without limitation.

Proposal Submission and Requirements. Firms responding to this RFP must submit to TxDOT six identical copies of the proposal.

Proposals must contain at least the following information:

1. Cover Letter - This should include a brief summary of the proposed project. The name, address, and telephone number/fax number of the firm and the name of the designated contact person
2. Project Outline/Work Plan - This should include a detailed description of the project. The purpose of the project outline/work plan is to specify the nature of the project. Fully address how the project meets the scoring criteria specific to each type of project. This narrative will be considered by the selection committee as demonstrating the firm's understanding and ability to complete the project in a timely manner.
3. Project Budget - The firm is expected to provide detailed, specific project cost information with the understanding that supporting detail may be requested during the selection process. Transit facility budgets must contain at a minimum: site preparation (if applicable), construction, material, supplies, labor, salary, and equipment costs. Mobility aid modification budgets must contain at a minimum: salary/labor, material, and supplies cost. Marketing and service planning budgets must contain at a minimum: salary costs (by staff titles), fringe benefits (by staff titles), travel, equipment, supplies, and

contracts. All sources of match funds must be listed and documented for all projects.

4. Certifications - Each applicant is required to provide certifications and assurances with their proposal. These certification and assurances include but are not limited to: Labor; Substance Abuse; Debarment and Suspension, Lobbying, and Environmental. Copies of the required Certifications and Assurances will be available at the pre-proposal meeting.

5. Signature Page - All proposals must be signed by an authorized officer of the firm.

Proposals must arrive at 150 E. Riverside, Austin, Texas 78704, (TxDOT, Public Transportation Division, Attn.: Susan Hausmann) no later than 12:00 noon on December 16, 1998. Facsimile or e-mail submissions will not be accepted by TxDOT. Proposals or modifications or addenda to proposals received after the prescribed date and time will not be considered. Any proposal may be modified or withdrawn by written notice received in the location designated above at any time prior to 12:00 noon on December 16, 1998. All proposals received, even those withdrawn from consideration, become the property of TxDOT.

Notification of Award. TxDOT will notify all firms submitting proposals in response to this RFP after the selection has been made. It is anticipated that contracts will be awarded on or about March 1, 1999. The relative standing or merits of unsuccessful projects will not be discussed.

Agency Contact. Questions concerning this request for proposals should be submitted to Susan Hausmann, TxDOT, Public Transportation Division, 125 E. 11th. Street, Austin, Texas 78701-2483, phone 512-416-2833, e-mail: shausman@mailgw.dot.state.tx.us.

TRD-9815000

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Filed: September 23, 1998



Texas Workers' Compensation Commission

Public Hearing

September 16, 1998 at 10:00 a.m.

4000 South IH 35, Tippy Foster Meeting Room 910

Austin, Texas

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 an 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)

3. ADJOURNMENT

TRD-9814308

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: September 9, 1998



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